

**In the Supreme Court of the United States**

OCTOBER TERM, 1991

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FEDERAL TRADE COMMISSION, PETITIONER

v.

TICOR TITLE INSURANCE CO., ET AL.

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE THIRD CIRCUIT

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**JOINT APPENDIX**

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KENNETH W. STARR  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 514-2217*  
*Counsel for the*  
*Federal Trade Commission*

JOHN C. CHRISTIE, JR.\*  
PATRICK J. ROACH  
BELL, BOYD & LLOYD  
Suite 1200  
1615 L Street, N.W.  
Washington, D.C. 20036  
*Attorneys for Respondents*  
*Ticor Title Insurance*  
*Company, Chicako Title*  
*Insurance Company, and*  
*SAFECO Title Insurance*  
*Company (now known as*  
*Security Union Title*  
*Insurance Company)*  
\* Counsel of Record for  
Respondents Indicated

[Additional counsel listed inside cover]

JOHN F. GRAYBEAL \*

ROBERT H. TILLER

PARKER, POE, ADAMS

& BERNSTEIN

One Exchange Plaza

Post Office Box 389

Raleigh, NC 27602-0389

*Attorneys for Respondent*

*Lawyers Title Insurance*

*Corporation*

DAVID M. FOSTER \*

MICHAEL P. GOGGIN

FULBRIGHT & JAWORSKI

801 Pennsylvania Ave., N.W.

Washington, D.C. 20004

*Attorneys for Respondent*

*Stewart Title Guaranty*

*Company*

# JOINT APPENDIX TABLE OF CONTENTS

Page

## I. Documents Contained in Appendix to Petition for Writ of Certiorari <sup>1</sup>

### DOCUMENT

Opinion of the United States Court of Appeals for the Third Circuit, dated January 9, 1991 .....	Pet. App. 1a
Order Denying FTC's Petition for Rehearing and Suggestion for Rehearing <i>En Banc</i> , dated March 12, 1991 .....	Pet. App. 39a
FTC's Final Order and Opinion, dated September 19, 1989 .....	Pet. App. 41a
Initial Decision of Administrative Law Judge Morton Needelman, dated December 22, 1986 .....	Pet. App. 137a

## II. Documents Contained in Joint Appendix

Chronological List of Relevant Docket Entries .....	1
---	---

### EXCERPTS FROM TRANSCRIPTS OF TESTIMONY

Leonard C. Donohoe Testimony [1610] .....	2
Donald R. Grabski Testimony [1686] .....	8
Norman J. Wirtz Testimony [1738] .....	15
Neil Ainsworth Bethel Testimony [1885] .....	21
John B. Wilkie Testimony [2057] .....	29
Deloris Williamson Testimony [2169] .....	43
Emil L. Barberich Testimony [2223] .....	45
Thomas M. Ferraro Testimony [2300] .....	58
Irving H. Plotkin Testimony [2377] .....	60

<sup>1</sup> The documents listed in this section of the Table of Contents are contained in the Appendix to the Petition for a Writ of Certiorari, dated July 10, 1991. These documents are not reproduced in this volume.

## TABLE OF CONTENTS—Continued

	Page
Waldo R. DiSanto Testimony [2724] .....	74
Walter Shaw Bell Testimony [2824] .....	82
Robert Statton Testimony [2853] .....	87
FTC COMPLAINT COUNSEL'S TRIAL EXHIBITS	
CX 30A-B .....	91
CX 41A-E .....	94
CX 91Z-50, -103 .....	100
RESPONDENTS' TRIAL EXHIBITS	
RX 60A .....	102
RX 63-63A .....	104
RX 72 .....	106
RX 93-93B .....	108
RX 104 .....	112
RX 105-105A .....	114
RX 106 .....	117
RX 107-107A .....	118
RX 108 .....	120
RX 109-109B .....	121
RX 110 .....	124
RX 114-114A .....	125
RX 115 .....	127
RX 116 .....	128
RX 295 .....	129
RX 302 .....	130
RX 303 .....	132

## TABLE OF CONTENTS—Continued

	Page
RX 305 .....	134
RX 307 .....	135
RX 308 .....	136
RX 311 .....	138
RX 316 .....	139
RX 317-317A .....	140
RX 323-323A .....	143
RX 329-329A .....	145
RX 335 .....	147
RX 337 .....	149
RX 341 .....	150
RX 367 .....	152
RX 369-369A .....	153
RX 370-370A, 370C-E, 370U, 370V .....	155
RX 377 .....	163
RX 514 .....	164
JOINT PHYSICAL EXHIBIT:	
Ariz. Rev. Stat. Ann. (1975) :	
§ 20-341 .....	166
§ 20-365 .....	166
Ariz. Rev. Stat. Ann. (Supp. 1984) :	
§ 20-375 .....	167
§ 20-376 .....	168
§ 20-377 .....	169
§ 20-378 .....	170



## TABLE OF CONTENTS—Continued

	Page
Conn. Gen. Stat. (1985) :	
§ 38-4 .....	171
§ 38-201c .....	172
§ 38-201d .....	174
§ 38-201m .....	174
§ 38-201n .....	175
§ 38-201p .....	177
§ 38-201v .....	181
§ 38-201x .....	183
Mont. Code Ann. (1985) :	
§ 33-1-311 .....	188
§ 33-1-313 .....	189
§ 33-1-315 .....	189
§ 33-1-317 .....	191
§ 33-16-101 .....	191
§ 33-16-111 .....	192
§ 33-16-112 .....	192
§ 33-16-201 .....	193
§ 33-16-202 .....	194
§ 33-16-203 .....	195
§ 33-16-204 .....	196
§ 33-16-205 .....	196
§ 33-16-206 .....	197
§ 33-16-211 .....	198
§ 33-16-301 .....	198
§ 33-16-401 .....	198

## TABLE OF CONTENTS—Continued

	Page
§ 33-16-402 .....	199
§ 33-16-403 .....	200
Wisc. Stat. Ann. (West 1980) :	
§ 601.41 .....	201
§ 601.42 .....	202
§ 601.43 .....	203
§ 625.11 .....	205
§ 625.12 .....	206
§ 625.13 .....	207
§ 625.15 .....	208
§ 625.22 .....	208
§ 625.23 .....	209
§ 625.31 .....	209
§ 625.32 .....	210
§ 625.34 .....	211
Order granting certiorari .....	212

**CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES**

- Jan. 7, 1985 —Federal Trade Commission Complaint issued.
- Feb. 11, 1985 —Answer of Respondents Ticor Title Insurance Co., et al. filed.
- Dec. 22, 1986 —Initial Decision of Administrative Law Judge.
- Sept. 19, 1989 —Final Order and Opinion of the Federal Trade Commission.
- Dec. 15, 1989 —Respondents' Petition for Review filed in United States Court of Appeals for the Third Circuit.
- Jan. 9, 1991 —Opinion of United States Court of Appeals.
- Mar. 12, 1991 —Court of Appeals' denial of Federal Trade Commission's petition for rehearing and suggestion for rehearing *en banc*.
- July 10, 1991 —Petition for writ of certiorari filed.
- Aug. 23, 1991 —Brief of *Amicus Curiae* States of Wisconsin, Alabama, Alaska, Arizona, Arkansas, Idaho, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia for a Writ of Certiorari filed.

**TESTIMONY OF LEONARD C. DONOHUE**  
**JUNE 10, 1986**

\* \* \* \* \*

[1610] Q. Mr. Donohue, please state your name for the record, if you will, sir?

A. My name is Leonard C. Donohue.

Q. By whom are you employed, sir?

A. I am employed by Chicago Title Insurance Company.

Q. What is your position with Chicago Title Insurance Company?

A. I am senior vice president and general counsel for the company.

\* \* \* \* \*

[1615] Q. Had you received information from the department to the effect that rate justification would be required by title insurers in Wisconsin?

A. Yes, I had. We were latecomers in the insurance industry. In the '50s there was probably only two underwriters writing early on, a predecessor company that I referred to and, I believe, an agency of Lawyer's Title. In the '60s there were perhaps 10 or 12 underwriters. We were maturing. The department was looking at us more and more like insurance, like a true insurance company. And they expected rate justification, statistical data to support the charges that we were making and they so advised us.

\* \* \* \* \*

[1618] Q. Now, had you had any contacts with any insurance department officials prior to the time this filing was made?

A. We would have had contact between June of '68, [1619] the exploratory organizational meeting, and April of '71 when we made the first rate filing on a fairly regular basis. Through our counsel, our counsel being counsel for the rating bureau, one Richard Buellesbach of Milwaukee, we had submitted Articles of Association to the department for approval. And that went on for

a period of time until the department was satisfied with the document that they ultimately accepted. There were those contacts with the legal area.

There were subsequent contacts with Mr. Kennedy on their expectations both of a filing and their subsequent expectations of statistical support, rate justification information.

Q. Now, what were their expectations with respect to statistical support, rate justifications?

A. Well, basically that we adhered to and comply with the statutory provisions in the State of Wisconsin relating to the submission of statistical information. And since we were pioneering in this line of insurance, Mr. Kennedy's counsel was to the effect that he would accept our initial filing subsequent to the submission following some experience of statistical information justifying the rates that we were charging.

He alluded early on to the fact that we obviously had no experience because we had just filed the [1620] rates. He indicated that he would accept those paralleling that at the time to a line of snow mobile insurance. I gather snow mobiles were new in 1968 or relatively so. He said he accepted whatever their filing was with the expectation that experience would follow in the way of statistical justification.

Q. So do I understand you correctly to say that what you were hearing was that the filing would be accepted subject to the subsequent filing of rate justification statistics?

A. Exactly.

Q. And you had made it clear before the filing that the filing was going to be a filing of basically historical rates as I understood you?

A. That's right.

Q. Did any insurance department officials give any indication of what would be done with the filing once it was received by them?

A. Mr. Kennedy indicated that he would peruse it, evaluate it and advise us accordingly.



Q. Did that happen as far as you know?

A. He accepted the filing and again on the conditions that he had set forth, that we follow up in due course with experience.

Q. Let me call your attention to the next exhibit, [1621] if I can, which is RX-302. Do you have that?

A. Yes.

Q. The first two paragraphs of that appear to reflect conversations that you had with Mr. Kennedy. Would I be correct about that?

A. That is right.

Q. And according to your note here, he is telling you that he would carefully review the filing when it was made?

A. Yes.

\* \* \* \*

[1626] Q. Now, you mentioned before that the department [1627] had expected the rate bureau to develop statistical support for the rates that had been filed.

A. Yes.

Q. How did the bureau proceed to accomplish that or maybe I should ask you first, did it?

A. We did it. There was considerable, I guess, probing early on as to the type of statistical data that we could and should submit. The history of some of this would be that unlike other, say, P.C. companies, the companies in our line of insurance each had their separate accounting systems for the booking of revenue. And those systems did not at that time, anyway, necessarily break down title revenues by level of risk nor by product line nor the type of things that would normally be included in a statistical plan conventional for P.C. companies.

We had to identify how best we could satisfy the department and gather data. We had to find the individual or entity that could design such a plan for us. And as competitors who had never shared anything with

each other, we had to break down some laws of resistance there, i.e., we had to find the common collection tool for the collection of the data desired by the commissioner and it took a period of time.

Q. Let me refer you to RX-318, which is a letter of [1628] October 1974 from Irving Plotkin to Robert Mitchell, who I guess is still president of the rate bureau at this point.

And does this letter reflect the fact that Arthur D. Little had been retained by the bureau to develop this statistical data?

A. Yes. The direction we ultimately took was to retain one Dr. Irving D. Plotkin of Arthur D. Little, Inc. to design the statistical and an income and expense plan for us. We were aware of the fact that Plotkin had done work in other states for the industry and for the insurance departments in furtherance of this very thing.

\* \* \* \*

[1640] JUDGE NEEDELMAN: Just a moment. I don't quite follow that, Mr. Donohoe. Why does the existence of the Plotkin effort bear on whether 3.33 was adopted or not? I am not sure I follow that. I wish you would explain that.

THE WITNESS: I can offer my thoughts on it. The primary thing in my judgment that the department wanted from their proposed 3.33 was to get our industry's attention and accelerate or jack up our effort to get our statistics together and submit them to the department in furtherance of rate justification.

In my judgment, I think the proposed maximums on search and examination were simply intended to get that [1641] attention. I am not sure the department itself really, really believed that that was a meaningful proposal.

\* \* \* \*

[1646] Q. Do you have any recollection of what happened after this filing, this 1981 rate filing was made?

A. My activity with the bureau was somewhat lessened at that time because of some of the other responsibilities that we covered in qualifying statements early on. The commissioner was Susan Mitchell and a party by the name of John Keegan had succeeded Louis Hannes as director of that bureau of rates and forms.

Keegan was totally unfamiliar with title insurance and wanted to bring himself up to speed as soon as possible. And my recollection is that we, we being Mr. Buellbach, our counsel, and one George Hursig of Chicago Title, then a Chicago Title insurance specialist in rate regulation, and Donald Grabski, who would then have been president of the rating bureau, all met with Keegan and his subordinate, Mr. Wirtz, to discuss where we had been historically in furtherance of rate development and rate justification.

Q. This is the meeting that is reflected by RX-369, which is the next exhibit?

[1647] A. Yes. My best recall is that I attended the meeting with Keegan primarily as a charter member of the bureau in its initial development of rates and forms filings. The exhibit you just referred to, RX-369, is a follow-up letter to that meeting wherein I forwarded to Mr. Keegan some of the matters previously submitted to the department which he would have had there but with which we could put our hands on easier. I sent him some historical background.

Q. This appears to be primarily requests for matters that would go to rate justification, is that a fair assumption?

A. That's right.

Q. Was Mr. Keegan concerned about that in the context of this 1981 rate filing?

A. I don't recall that he was concerned. He wanted to know more about it and I believe my follow-up letter, RX-369, encloses the initial plans that Dr. Lipshutz sub-

mitted and that Mr. Hannes okayed conditionally and some subsequent correspondence to the department on reaching a consensus on those Arthur D. Little plans as the appropriate vehicles with which we could gather statistical and income and expense information.

\* \* \* \* \*

[1676] JUDGE NEEDELMAN: Well, my recollection, as I am sure is muddy by this time, is that what Arthur D. Little did for you in Wisconsin and perhaps for other rating bureaus was to examine income and expense data and then propose what are considered to be a fair rate of return based upon capital investment. Is that correct?

THE WITNESS: That's correct.

JUDGE NEEDELMAN: My question to you is how did a rate evolve from the Arthur D. Little submission?

THE WITNESS: The rates, proposed rates were initially developed by committee activity among member companies and these rates were put down in some format and given to Arthur D. Little. And they were asked: From what you know, ADL, about the industry book of business in Wisconsin last year and the year before, what will this do for us next year in the way of a rate of return? And they would respond in report form that they would submit to the department. And I believe that formal process of prospective profitability probably [1677] began with the 1981 manual we touched on.

\* \* \* \* \*

## TESTIMONY OF DONALD R. GRABSKI

JUNE 10, 1986

\* \* \* \* \*

[1686] Q. Will you please state your name, sir?

A. Donald E. Grabski.

Q. By whom are you employed, Mr. Grabski?

A. Lawyers Title Insurance Corporation.

Q. What is your position with Lawyers Title?

A. I am vice president, multi-state manager.

\* \* \* \* \*

[1704] Q. So what reaction did you get when you were informing Mr. Wirtz about this anticipated filing?

A. Well, his reaction to the filing of the manual was in a positive nature. However, when we talked about increasing rates, he seemed to be very adamant about we were going to have to have some support of justification for it because the department was not about to okay increases in rates just offhand.

Q. Now, did anything else happen that you recall between that discussion or those discussions and the filing itself? Let me ask you, do you recall any further conversations with any department officials before the filing was actually made?

A. We had several discussions. I cannot remember [1705] exactly because of the generalness of the visits whether or not I talked to Mr. Keegan, who may or may not have been present when I would visit the department. Generally if he was in the area, Mr. Wirtz would ask if we would like to all get together to discuss whatever we were discussing. And at this time they seemed to be very direct about the fact that they needed substantiation for new rates.

Q. During the two-year period or so that you were president of the rate bureau, was it your practice to make periodic stops to the insurance department in Madison?

A. I think between phone calls and visits, probably I would say anywhere from three to five times a month I would be either in the office or talking to them on the

phone. I did this even preliminarily when I was a delegate, just for the company. But I continued it on after I became the president. I felt that it gave us a much better insight and a much better measure of what their expectations were if we knew it up front rather than to throw something at them and wait for their reaction.

Q. Did you always have a specific purpose for that kind of contact?

A. In some instances I would say that after I [1706] became president, it was usually a specific—although I still had reason to be there as a representative of our company to determine what deviations had been filed by other companies to find out if there was any general information that may impact us as an individual company and/or the rate organization. So that our conversations were quite numerous.

Q. Well, after this 1981 filing was made, did you get any word with respect to its acceptance or whatever or not?

A. Well, I had called several times because there seemed to be a delay after they received it and asked if there was any problem with it because we hadn't had a response. And in telephone conversations Mr. Wirtz had indicated that he really didn't know what the results would be, if it was being studied by their staff and by their staff counsel and that he would get back.

He didn't think there was any problem but he wasn't sure because they hadn't finished their report. I think there might have been an occasional two or three telephone calls at that time to try to find out what if anything was wrong with the filing.

\* \* \* \* \*

[1707] Q. Let me ask you to refer to the next exhibit, which is RX-367. It appears to be a letter from John Keegan to you dated April 8th. Does that also refer to this February 1981 rate filing?



A. Yes. Mr. Keegan had, prior to this letter, I [1708] believe, called me to advise me that he had some very strong feelings about what we had presented particularly in the rate increase area and that they felt that they really were going to scrutinize this and that because of the rate increases and the information that was submitted with the manual, that they could very well be calling for a hearing on the matter unless they could gather sufficient documentation to offset their attitude about a hearing.

\* \* \* \* \*

[1709] Q. Your letter to Keegan dated April 16, 1981?

A. Right.

Q. You testified and your letter says that you suggest an informal meeting. Did that meeting take place?

[1710] A. Yes, it did.

Q. Who attended that meeting, if you recall?

A. I think we had several attempts to arrange a meeting and when we finally did, because of the participants, we met in the commissioner's office. I believe there was Mr. Wirtz, Mr. Keegan, Mr. Van Cleave, I believe, myself, Mr. Donohoe and Mr. Hursig, as representatives of the bureau.

Q. Do you recall what the discussion was at that meeting?

A. At the outset Mr. Keegan seemed in control of the meeting. He seemed to direct the inquiries of the questions with support from Mr. Wirtz where I think he felt he was in a weak area on this question.

He was primarily raising the question of the rate increases, the form of justification that we had included or we thought we had included in the filing.

We had attempted to more or less explain the whole manual to him so that he would be clear in understanding of what we were attempting to do. So with that we walked him through the manual and then, of course, his questions pursued the rate increases and the method for substantiating them.

At that point he felt that he ought to have more financial data to support the rates as we had presented [1711] them. Again, this was a filing on our own in the department and not with the assistance of any outside help. So that we probably were a little remiss in some of the information we should have included in there to give a more substantial background.

I think we had submitted two years of financial information and he said he needed five years.

\* \* \* \* \*

[1712] Q. And what happened after this meeting, do you recall?

A. As I recall Mr. Donohoe did go back to his office and his files and contacted those parties at A.D. Little or was able to obtain communications and correspondence from them that he, in turn, had promised and submitted same to Mr. Keegan, which was in response to his inquiry.

Q. Would what you just said be reflected by RX-369, which is the next exhibit, the letter we have seen before today from Mr. Donohoe to Mr. Keegan of June 1, 1981?

A. Yes.

Q. After this material was submitted by Mr. Donohoe's letter, what happened, do you recall? Was there further contact with the insurance department?

A. Well, yes, there was. To the question of whether or not that satisfied their inquiry, I was told directly that it was under consideration. It was being [1713] reviewed by staff. They were consulting with their attorney. They were not certain that what we had submitted was sufficient for them to give an acceptance on but that they would let us know later.

Q. Now, do you recall there being a later meeting at the insurance department about this filing?

A. Yes. We had arranged after the submission to return to the department in an attempt to, again, find

out if there was anything specifically that they were objecting to that we had not responded to.

Q. Do you recall when that meeting occurred?

A. I can go by reference of an office memo.

Q. Let me ask you to refer to RX-371, if you will, which you should have in front of you.

A. This is dated August 4th, 1981.

Q. Does that refer to the meeting that you just testified to?

A. Yes. This was the second meeting in which myself and Mr. Hursig attended and I want to believe it was in July—it had to be prior to this date—in which we again presented ourselves to Mr. Keegan and Mr. Wirtz to review the information submitted and to afford them the opportunity to ask or to require any additional information that they felt they needed to support the rates.

[1714] Q. There is a reference in this memo to the fact that the commissioner was 95 percent convinced that the filing were acceptable. I gather there was still some outstanding reservation about it. Do you recall what that was?

A. Well, it was my feeling they didn't want to commit to the fact that they may or may not accept them but I had the impression that they felt that they were getting the information they wanted to satisfy their inquiry. However, they may not have had it all at that time.

Q. Well, it is now August of 1981 and you are still talking about a February 1981 filing. What was the bottom line on all this? Did it ever get approved or accepted or whatever?

A. Eventually it was approved. I believe my first acknowledgment from the department was a phone call from Mr. Wirtz stating that they felt that they had the information they needed and that Mr. Keegan would either contact me direct or he would advise Mr. Wirtz that it was accepted and, therefore, that we could go ahead and apply the rates.

Q. Mr. Grabski, let me ask you to refer now to RX-374, which is the next exhibit, which is a letter from you to the commissioner of insurance dated October 18, [1715] 1982. What is this correspondence about?

A. Well, because of the nature of our business and particularly the economic conditions we had been going through at this time, we felt that sometimes our line of insurance wasn't being as responsive nor did it give us the opportunity to change our rates, whether up or down as to market conditions. And as president I know I had elected that perhaps it would be advisable if each year, as otherwise, that we would file a rate manual which would keep both information and rates current.

And so this was the second submission following the '81 manual that we were proposing, catching up, proposing, refining the manual.

Q. Now again, had you had any contact with insurance department officials before this rate filing occurred?

A. Yes, again I had spent a considerable amount of time with Mr. Wirtz explaining to him what direction we were going in, trying to determine whether or not we should follow the annual submission policy of placing a rate and a manual on record each year. I believe we probably had three or four discussions again. His comment was that if you are talking about rate increases, you better be prepared to justify them.

Q. How did the bureau justify the 1982 rate filing, [1716] if you recall?

A. Well, I believe this filing, we had incorporated the Arthur D. Little pro forma profitability analyses, which seemed to give some support or credibility to the fact that we wanted to increase certain rates and that the department seemed to rely more on this as a basis for rate review than they did just our submissions and our commentary.

\* \* \* \* \*

[1719] Q. Mr. Grabski, do you know who reviewed this 1982 filing after it was made, who in the insurance department?

A. I believe Mr. Wirtz did and he had stated that the other members of the staff were reviewing it.

\* \* \* \* \*

[1721] Q. Did the bureau expect its rate filings to be carefully reviewed by the department when they were made?

A. I think everyone was under the impression that they were being reviewed very carefully.

\* \* \* \* \*

**TESTIMONY OF NORMAN J. WIRTZ**

**JUNE 12, 1986**

\* \* \* \* \*

[1738] Q. Please state your name, sir?

A. Norman J. Wirtz.

Q. By whom are you employed, Mr. Wirtz?

A. Office of Commissioner of Insurance, State of Wisconsin.

Q. And what is your position there, sir?

A. I am an insurance analyst in the property/casualty section, Bureau of Market Regulation.

Q. How long have you been an insurance analyst, Mr. Wirtz?

A. Sixteen years.

\* \* \* \* \*

[1744] Q. I think you also mentioned that you reviewed premium increases?

A. Yes.

Q. What kind of review does that entail?

[1745] A. Premium increases, we call rate filing. The rate comes to the analyst and he will review the statistical data to see if it supports the increase. If it does not, he will talk to the company's actuary and have more information developed or he will discuss with the supervisor whatever the complications are and what approach we should take to the rate filing.

Q. Do you review rate filings which are made by rate bureaus as well as rate filings that are made by individual companies?

A. That's true.

Q. Are rate bureau filings reviewed any differently from the filings made by individual companies?

A. Generally rate bureau filings are handled with more care and more detail is sought when looking at the numbers in the content of the filing.



Q. Would you say that as a general matter more time is spent in the review of rate bureau filings?

A. Yes.

[1750] Q. Now, do you recall what you did with this 1981 filing when you received it at the insurance department?

A. I discussed it with my supervisor.

Q. Who would that have been?

A. Mr. Keegan.

Q. What did that discussion consist of?

A. I suggested to him that this could be a controversial increase and it would be wise for us to look at it closely.

[1751] Q. Had you made any determination at all as to the extent of the increase that was involved by this rate filing?

A. During the course of review, yes.

Q. And what was your analysis?

A. Approximately 11 percent.

Q. Did you make any statements to Mr. Keegan with respect to whether any additional statistical support for the filing might be forthcoming from the rate bureau, do you recall?

A. I believe the filing had a one-year experience period and it was my opinion that it should have a three-year experience period. And I believe the rate service organization complied and during the course of discussions, did file a three-year experience period.

Q. Do you recall what Mr. Keegan's reaction was to your observations about the significance of the filing?

A. I think he generally agreed with my opinion.

Q. Do you recall my asking you that question at your deposition?

A. No.

Q. And what your response was at that time?

A. No.

Q. I think you told me then Mr. Keegan told you to go through it from head to toe. Does that sound familiar? [1752] A. I very well could have said that.

Q. Well, how did you proceed then with your review of this filing after this conversation with Mr. Keegan?

A. I put on my actuarial hat and, first of all, took all the information that was in the filing and checked its mathematical accuracy. In addition to that, I pulled out the Plotkin studies to use what was relevant in that and checked it against the numbers in the filing.

In addition to that, I pulled out all the annual statements for the title companies and I added together the numbers of those companies involved in the rate filing. And I also checked that against the accuracy of the rates in the rate filing, the accuracy of the data in the rate filing. And then I adjusted the rates at different levels to see how different rate increases would affect residential versus commercial and played with different kinds of rates and so forth.

Q. I think you indicated before that you had requested or thought you were going to request additional financial data or statistical support. Did you do that?

A. To the extent that we requested additional experience years, that I remember doing. The other request I remember is asking them to explain some of the calculations, how they arrived at the revenue increases in the filing. That is the extent of my recall on that. \* \* \*

[1757] Q. Next, Mr. Wirtz, let me call your attention to the next two exhibits which are RX-374 and CX-124, 124-A. This appears to reflect another rate bureau filing which occurred in 1981. Do you have any recollection of that filing?

A. Yes.

Q. Now, was this filing reviewed by someone at the insurance department? Specifically, did you review it?

A. I think I gave a quick review, yes.

Q. I think again, let me see if I may refresh your recollection from your testimony at your deposition. When I asked you on page 50 whether you had reviewed that filing or whether you remembered anything about it, you said, "All I can say with certainty is I reviewed the filing." Is that correct?

A. That is close enough.  
 . . . . .

[1768] Q. Were all rate and form filings that were filed by the Title Insurance Rating Bureau in Wisconsin reviewed by the Department of Insurance in Wisconsin, Mr. Wirtz?

A. All rate and form filings?

Q. That were made by the Title Insurance Rating Bureau in Wisconsin. Were they all reviewed at the department?

A. Could I make several distinctions?

Q. You certainly may.

A. A rating bureau, a rate increase or a major policy form filing would have been reviewed. Endorsements would have been reviewed. The rates [1769] connected with the endorsement would generally, we did not review those.  
 . . . . .

Q. What did you do with respect to rates that were filed in connection with endorsements?

A. We would look at them and apply some kind of a judgment sense as to whether they were too high or too low and that was it. We didn't go beyond that.  
 . . . . .

[1775] Q. I would like to direct your attention now to CX-123-A-D [Letter to Commissioner of Insurance, Wisconsin Department of Insurance from Donald Grabski, Wisconsin Title Insurance Rate Service Organization, dated October 18, 1982] and also CX-124-A through Z-25 [Document entitled "Wisconsin Title Insurance Rate Service Organization Rate Manual," dated December 1, 1982].

Are you familiar with these two documents?

A. Yes.

Q. These reflect the 1982 filing of the rate bureau, is that right?

A. That's true.

Q. Now, I think on direct examination you mentioned that you didn't remember too much about the review of this filing, is that correct?

A. That's correct.

Q. But you didn't do any calculations with respect to this filing, is that correct?

A. No.

Q. Your review consisted of a cursory reading of the filing?  
 . . . . .

[1776] THE WITNESS: That's true.

JUDGE NEEDELMAN: Proceed.

BY MR. ANTALICS:

Q. And then you just stamped the filing accepted under the statute, is that correct?

A. That's correct.

Q. You didn't provide any reports or anything to anybody?

A. No.

Q. No written memoranda of any kind?

A. No.  
 . . . . .

[1798] JUDGE NEEDELMAN: Now, the 1982 filing, you personally did not review or did you? I am not sure what your testimony is with respect to that.

THE WITNESS: I should say I reviewed it, yes.  
 . . . . .

JUDGE NEEDELMAN: Now, describe for me again how intensive was your review of the 1981 filing which you described as being a substantial increase?

THE WITNESS: Well, see, we were concerned that if we didn't have a look at this filing and didn't review it carefully, and the press got ahold of it, the department would have had publicity.

Since the time I had been there, there hadn't been a rate increase in the basic premiums for title [1799] insurance. So we collected all the information we could and looked carefully at the information in the filing as compared to the information in the annual report and what I could break out of Arthur D. Little.

He had some useful things in that his revenue was listed by amount of liability starting from like \$10,000 up to like a half a million. So I could add those categories into the categories in the rate increase filing and see if the revenue projections were fairly accurate in the rate increase filings. And they were.

JUDGE NEEDELMAN: It is your testimony that you gave the 1981 filing an intensive review?

THE WITNESS: Yes.

\* \* \* \*

[1825] JUDGE NEEDELMAN: Now, when the rating bureau asked that for the substantial increase, did you make a comparison of the proposed increase in Wisconsin as compared to rates in other states?

THE WITNESS: What I did, the other states that I checked, I think it was Minnesota and Illinois, I did make a rate comparison, yes.

\* \* \* \*

**TESTIMONY OF NEIL AINSWORTH BETHEL**  
**JUNE 13, 1986**

\* \* \* \*

[1885] Q. Good morning. I wonder if you could state your full name and address, business address for the record, please?

A. Neil Ainsworth Bethel. 18300 Von Karman Avenue, Irvine, California.

Q. By whom are you presently employed?

A. The firm is Tillinghast, Nelson & Warren, Inc.

Q. Could you briefly describe for us what your firm does?

A. We are an actuarial and risk management consulting firm and have about 600 employees. And we consult in life and property and casualty insurance and risk management areas.

Q. Can you tell me who the clients of your firm [1886] include?

A. We do work for a variety of clients, state regulators, insurance companies of various types, life insurance and property and casualty insurance companies and corporations who purchase insurance or self-insure some of their risks.

Q. Is the Irvine, California office where you work the only office of Tillinghast?

A. No. Tillinghast has about 20 offices throughout the United States and three or four offices in foreign countries.

Q. In terms of size, can you tell me how Tillinghast compares with other firms that are involved in the same kinds of actuarial and risk management consulting?

A. We are one of the largest actuarial consulting firms. There are some pension consulting firms that are larger, but in the property and casualty area in particular we are the largest consulting firm.

\* \* \* \*

[1893] Q. With respect to your Arizona project, when did that involvement begin?



A. We received a request for proposal to undertake the Arizona examination in about May or June of 1981, I believe.

. . . . .

[1894] Q. Mr. Bethel, I wonder if you would turn your attention, please, to the document on the page that has been marked as RX-96-E. It has a heading marked "Introduction" at the top of the page. And immediately following that heading there is a sentence that reads as [1895] follows: "Tillinghast Nelson & Warren, Inc. (TN&W) has been engaged by the Director of Insurance of the State of Arizona to conduct an examination of the Title Insurance Rating Bureau of Arizona, Inc. (TIRBA), pursuant to ARS Section 20-370."

My question is whether that statement from the report to your recollection accurately reflects the nature of your firm's engagement with respect to this project?

A. Yes, it does.

Q. On that same page, the text goes on referring to six items which are described as being the scope of the examination.

The first two of them read that "The scope of this examination has included an examination of the rate making procedures and methodology"—

MS. MALESTER: Your Honor, I would like to object to the reading of the document into the record. It hasn't been introduced or offered.

JUDGE NEEDELMAN: Objection overruled. This is preliminary.

BY MR. ROACH:

Q. "An examination of the rate making procedures and methodology used by TIRBA with respect to the development of title insurance rates in Arizona," and "A [1896] determination as to whether title insurance rates filed by TIRBA are reasonable, not excessive and not inadequate."

I guess my question, Mr. Bethel, is whether these statements here accurately reflect the scope of the examination that your firm conducted in preparing this report?

A. Yes, it does.

Q. Was the scope of the examination set out in this text determined by the Tillinghast firm or was it determined by the Arizona Insurance Department?

A. No. The scope was determined by the Arizona Insurance Department. This description, these six statements defining the scope, are almost verbatim from the request for proposal that was sent to us initially laying out the scope of the work that the Insurance Department wanted done.

. . . . .

[1904] Q. To whom did you answer in preparing the report, was it the department, was it the Insurance Department or was it TIRBA, the rating bureau?

A. No, it was clear that we were answering to the Insurance Department. They were specifying the scope and they were specifying the completion of the project to their specification.

We were answering to the Insurance Department.

. . . . .

[1910] Q. Now, the Insurance Department to your knowledge had been receiving for several years prior to the time you were involved in the report, in your report, analyses of industry profitability prepared as a result of the Arthur D. Little process, is that correct?

[1911] A. That's right, starting in '78, I believe.

Q. Was it your sense that the Insurance Department was interested in having those reports and the title insurance industry generally looked at closely by someone who had some level of expertise generally in property/casualty areas?

A. Yes, it was.

Q. Was the scope of your assignment, Mr. Bethel, limited to a technical analysis of the title insurance rates as

they existed at that time or were you given a broader job of looking over the title insurance industry generally?

A. I think the general scope of our assignment was relatively broad, to bring to our examination of the rating bureau some understanding or background and the nature of title insurance and how that related to the preparation of rate levels and how that related to the profitability of the business.

So I think it was not intended to be just a technical examination of a particular rate making procedure as such.

\* \* \* \* \*

[1970] JUDGE NEEDELMAN: At the time you conducted your study in 19—well, the study was conducted between what period?

THE WITNESS: The study was conducted starting in about mid 1981 and completed in mid 1982.

JUDGE NEEDELMAN: During that particular time period you weren't looking at a specific rate change, were you?

THE WITNESS: No, we were not.

[1971] JUDGE NEEDELMAN: Now, the TIRBA came into existence when?

THE WITNESS: 1968, I believe. 1968.

JUDGE NEEDELMAN: Between 1968 and the time your study is completed in 1983, actually you did complete the study in 1982, right?

THE WITNESS: Right.

JUDGE NEEDELMAN: Between 1968 and 1982 how many basic rates had been filed?

THE WITNESS: If I can refer to the rate charge that gives the premium per amount of insurance, for example, for an owner's policy, which was kind of the fundamental chart that drives most of the rates, it is my understanding that from 1968 up until the time that our study was completed, that that chart in Arizona had never been changed.

JUDGE NEEDELMAN: Thank you. Counsel.

BY MR. ROACH:

Q. Despite the fact that there had not been rate changes of the sort that you just mentioned during that time period, the Insurance Department had, nonetheless, been provided with information concerning the profitability of the industry in Arizona, is that correct?

A. That's true. The Arthur D. Little reports starting in 1978 gave specific profitability in Arizona [1972] by their way of determining that.

JUDGE NEEDELMAN: I am sorry, did you say '78?

THE WITNESS: Since 1978. Prior to that point in time the insurance companies, and even during that time, would have submitted to the Insurance Department their Form 9's, their annual statements, which contained some material on profitability for each insurance company on a national basis.

And they contained some specific information about their activities in each location, including Arizona.

Now, it is not in the level of detail of the Arthur D. Little material, and of itself, from an actuarial viewpoint, it is not as good as the Arthur D. Little material, but over that entire time frame the Insurance Department was being provided with material that would allow some monitoring of profitability, and particularly during the A.D. Little time period of very, in my opinion, a very precise monitoring of the profitability in that state.

\* \* \* \* \*

[1974] Q. Beginning at page RX-96-I, Mr. Bethel, there is a heading, there is a section of the brief with the heading "Are Arizona Title Insurance Rates, as Filed by TIRBA, Reasonable, Not Excessive and Not Inadequate."

I wonder if you could briefly describe for us [1975] what your conclusion was with respect to this issue?

A. Let me clarify a little bit what Arthur D. Little was reporting and what we were concluding from that.

The first A.D. Little report that was prepared in 1978 did, in fact, have experience being reported and gathered

back to 1972. So the first report submitted covered 1972 up through '78.

Each subsequent report added another year to the data base.

So even though they only reported over a three year period, we were at the end of that period able to look back from 1972 to 1980 and get a perspective for the results as they were realized over that time period.

So the first conclusion we reached was in looking over that time period that the rates as actually used over that time period did not, in our opinion, appear to be excessive based on the rate of return that they generated.

The fact that for the most part the rates being charged over that time period were, in fact, still the current rate also allowed us to be able to interpret that A.D. Little information as some indication of the current adequacy of the rate level because we were still not reviewing a rate filing as such.

[1976] We were looking at it in terms of what the prevailing rate level was and whether, really from our own review, whether we thought that that rate level should change.

And the conclusion there in reviewing the experience up to 1980 was that the 1980 profitability in particular had shown a decline, and we were now sitting somewhere in the middle or late '81 or early '82 when we were reaching this conclusion.

And so even though we didn't have A.D. Little prepared experience for 1981 we knew that, in fact, the real estate recession at that point was still going on.

And so based on how the title insurance experience relates to both those cycles, we anticipated the 1981 would also be adverse in terms of profitability.

So that led us to the conclusion that it might be that the current rates as being charged then were inadequate.

It was really a two-pronged conclusion, a comment upon the rates having been charged over that whole historical period and then a comment about the rates as

currently being charged at the time the study was being conducted.

\* \* \* \* \*

[1980] Q. Mr. Bethel, I think I have only a couple more questions I would like to address to you. The first is whether in light of your dealings with the Arizona Department of Insurance, that we have been discussing throughout the period of the morning, when your firm was retained by the department to conduct this study it was your sense that the department was interested in actively supervising the rate filing activities of TIRBA?

\* \* \* \* \*

[1981] THE WITNESS: Yes, I think they were interested in actively supervising the title insurance and looking at the activities of TIRBA. And I say that from the context that I mentioned before, that we were engaged to do this study kind of hard on the heels of the activity of the Arizona Insurance Department, Commissioner Low in particular, in making a big push in the worker's compensation area to have premium deviations, to examine the issue of profitability in worker's compensation, and that there were parallels seen between worker's compensation and title insurance and the potential at [1982] least for similar actions and, perhaps, similar savings.

And so I think that context helped instigate this examination. And that was the intent on the part of the Insurance Department, in part anyway.

BY MR. ROACH:

Q. Mr. Bethel, is it your sense that, if there had been a different conclusion from your report with respect to the issue of whether the prevailing TIRBA rates were excessive, that some action would have been taken by the Insurance Department with respect to that hypothetical situation?



MS. MALESTER: I object on the basis of speculation.

JUDGE NEEDELMAN: Objection overruled. He may express an opinion.

THE WITNESS: It is my opinion that if the, for example, if the profitability had been quite high in that kinds of insurance business, as measured by A.D. Little or by whatever method, that the department would have instigated some action to lower rates.

I am pretty confident based on their track record in other lines of business, particularly worker's compensation up to that point, that they would, in fact, have done so.

\* \* \* \* \*

# TESTIMONY OF JOHN B. WILKIE

JUNE 16, 1986

\* \* \* \* \*

[2057] Q. Mr. Wilkie, were you involved in the formation of the Title Insurance Rating Bureau of Arizona?

A. Yes.

Q. Can you tell me what your involvement was?

[2058] A. Originally at the very beginning I attended the meetings, but I was not the official representative. Lawyers Title Insurance Corporation was the member.

I was also on a committee of the Land Title Association, which set up and formed the bureau.

Q. Were you present at the formation meetings of the bureau?

A. Yes. I attended all of those meetings.

Q. Do you recall when those meetings occurred?

A. They were in early 1968.

Q. Mr. Wilkie, did you continue to be involved in the operations of TIRBA, the Title Insurance Rating Bureau of Arizona, in the years subsequent to its formation?

A. Yes. I became the official representative of Lawyers Title Insurance Corporation shortly after its formation and remained on the board until its demise in 1983.

\* \* \* \* \*

[2071] A. In the early years, '64 and '65, there had been or there was one title insurance company in Phoenix, Arizona who was placed in the hands of the receivership of the Insurance Department.

They had been indulging in practices which led to an instability in the industry. And certain legislatures and members of the public and our industry felt that it would lead to difficulties in the entire industry.

[2072] In addition to the title underwriter, who was put in receivership, there was an agency, title agent, who became financially in difficulty and was taken over by its underwriter.

It was these particular matters that led to the introduction in the legislature of this legislation. I believe it

was introduced several times, but it finally passed in 1967.

\* \* \* \* \*

[2073] Do you recall, Mr. Wilkie, when the first filing of rates by the rating bureau was made?

A. The first filing was in early March, I believe, of 1968.

Q. Mr. Wilkie, I would like to show you a document that has been admitted into evidence in this proceeding as Exhibit CX-8 and ask you to briefly take a look at it.

[2074] Are you familiar with this document, Mr. Wilkie?

A. Yes.

Q. Can you tell me what it is?

A. This is a copy of the filing made by the rating bureau with the director of insurance on March 15, dated March 15, 1968, which is a filing of the title insurance rates approved by the rating bureau.

Q. Can you describe for me how the rating bureau came to determine to file the rates in the form in which they are shown in CX-8?

A. After the rating bureau was officially formed we met in a continuing session for approximately two weeks. Each person attending the meeting, and there was a representative, to the best of my recollection, for each one of the title underwriters, and there were also persons attending from the title insurance agents, they brought with them various copies of the rates that they were using at that time.

One of them brought a proposed manual which had come out of, primarily out of California with the definitions and the classifications of the rates.

We discussed them over a period, as I say, of approximately two weeks drafting this document for the purposes of filing.

The basic rate, which you will find on the first, [2075] well, I think it would be the third and fourth pages, was a rate which was taken from a rate schedule that we had

at that time, "we" being Lawyers Title of Arizona, it was then called Arizona Land Title and Trust Company, with some very minor adjustments, and we eliminated the \$500 rate since nobody issues \$500 policies any more and we went from \$1,900 up.

And this was adopted by the rating bureau as the basic insurance rate.

Q. Are you referring to the rate schedule that is shown on pages CX-8-C and CX-8-D of the document in front of you?

A. Yes.

Q. So these rates were rates that had been used in the marketplace prior to the time that the rating bureau was formed?

A. Yes.

Q. Were these rates typical of the rates that were charged by title insurers in that time frame?

A. Yes. The rates were not all the same, but they were basically in the same ballpark. There were variations, but they were not material variations. And for the purposes of the filing we agreed and adopted this particular schedule.

\* \* \* \* \*

[2076] Q. Mr. Wilkie, do you recall whether there were discussions concerning possible general rate changes in the TIRBA rates during the time period when TIRBA was in existence, that is, discussions among TIRBA members?

A. From time to time there would be discussions of the possibility of rate changes. Some of our members, particularly some of the smaller ones, felt that we should have rate increases. They were discussed.

We felt that we did not want to go in with any major changes until we had developed a foundation of financial and statistical information.

What we had developed indicated that the industry was basically sound. We felt that it would be [2077] unwise to go in with any major adjustments.

Q. Were efforts made by TIRBA to build a system to collect data to support the appropriateness of the TIRBA rates?

A. Yes. I became president of the rating bureau. I believe I was the second one. That would have been probably the latter part of 1969, early 1970. We began to look into what was available in this area.

I talked with representatives of existing rating bureaus. We looked at some of the forms and procedures that were being used in the State of Texas where they have the state-regulated rates.

And we actually interviewed the person from the State of Texas, a person by the name of Sammy, S-a-m-m-y, Sapp, S-a-p-p, who was an employee of the Texas Insurance Department.

He came to Arizona and attended our convention in probably the latter part of '69, I am not quite clear on that date, and gave us a proposal which we accepted. And unfortunately he had died about two months after his visit to Arizona, so we were frustrated in that area.

We talked to a person by the name of Jeffrey, J-e-f-f-r-e-y, I believe, Livingston, who was a doctoral student at ASU and had done work in modeling rate making for the insurance and I believe other industries and [2078] prepared for us a model, computer model, which none of us ever really understood. Nothing more came of that.

We talked to several accountants and finally hired the firm of Ernst & Ernst to do rate, not rate, income and expense and profit gathering for us.

A committee was appointed by the rating bureau, and it consisted of mostly the financial people in the home offices of the underwriters, to develop a format for the collection of financial statistics.

We put together, based on this information, a series of statistics, financial statistics from the year 1966 to the year 1970, including the year 1970. This information

was turned over to Ernst & Ernst when they started their gathering in the year 1971.

Each underwriter and each agent turned over to Ernst & Ernst on forms prepared by the bureau their income, expense and profit statements. Ernst & Ernst took this data, including the previously-accumulated data, and prepared a statement or experience exhibit each year until 1977, I believe.

Q. Mr. Wilkie, do you recall whether you made any contacts with representatives of title insurance rating bureaus in states other than Arizona about the ways in which TIRBA might go about its data collection?

A. Yes, we talked to several of them. I remember [2079] the State of Pennsylvania. I believe there were others. However, I cannot remember who they were.

We did some work from the work that was being done in the State of California at the time.

Q. With respect to the Ernst & Ernst reports that you mentioned, I have a couple of questions.

Did Ernst & Ernst determine what data was to be collected for use in the reports that they were preparing?

A. No. That determination was made by the bureau. Ernst & Ernst's primary function was to take the information from each individual member so that each company wouldn't know what the other company was doing.

There was a certain resonance to exchange direct information, so that it was given to Ernst & Ernst who put it all together on an industry basis, so that the information would be on the industry rather than each individual member.

Q. Did Ernst & Ernst prepare such a report every year?

A. Yes.

Q. Were the Ernst & Ernst reports submitted every year to the Insurance Department?

A. No.



Q. What was done by TIRBA with the data that was received from Ernst, with the reports that it received [2080] from Ernst, excuse me?

A. We maintained them. We reviewed them when we received them. They contained a statement each year, an accumulative statement as to the net profit of the industry over that period of time.

We felt that we should have them available in the event that they were required by the department or, in the event that we deemed that we wanted to go in and have a rate hearing, we felt that we should have that information.

They were subsequently transmitted to the department, I believe, in early 1977.

The prior data, which was done by the bureau itself for the first five years, was submitted to the department in 1971.

Q. Can you tell me the circumstances that prompted the submission of that data to the department in 1971?

A. The department had issued a call for a hearing involving, as I recollect, two matters. One was the method of determining rates, and the other had to do with the determination of risk premium and retaliatory tax provisions of the state code.

[2081] Do you recognize this document, Mr. Wilkie?

A. Yes. This is a letter from James C. Wickline, W-i-c-k-l-i-n-e, president, and that is president of the Title Insurance Rating Bureau of Arizona, dated November 1, 1971 addressed to Millard Humphrey, director of [2082] insurance, State of Arizona.

Q. I would like to direct your attention to the letter's reference to several enclosures, and particularly in the third heading reference is made to the submission of the enclosure of "a consolidated statement of title insurance industry statistics covering the period from 1966 through and including 1970."

Do you know what this reference refers to, Mr. Wilkie?

A. That refers to what I have previously mentioned, the collection of data by our own rating bureau. It was an income and expense statement consolidated from the figures of most of the industry, I would not say it was all of the industry, however; a good portion of the industry.

[2083] JUDGE NEEDELMAN: What was this controversy over risk premium all about?

THE WITNESS: Basically it went to how much money the State of Arizona was collecting in taxes. And each company basically had a different method of filing the tax form.

And it is some time ago, my memory is a little hazy, but I believe one of the major companies showed a very small amount of tax where one of the minor companies paid a considerable amount of tax and, in fact, after the hearing they filed a petition for a refund on their tax and actually, I believe, it got it, but it had to do mostly with tax matters, tax income.

[2092] Q. Do you recall having any meetings with representatives of the Insurance Department with respect to the escrow rate filing?

A. Yes. I met with some others, with Emil Barberich of the Department of Insurance. I believe it would have been possibly September of 1977.

Q. Do you recall what the nature of your discussions were at that meeting?

A. We were in the process of, the rating bureau was gearing up for the filing up of the escrow rates and we wanted to discuss with the department what their requirements would be in this connection.

Q. What do you recall Mr. Barberich saying about the nature of the requirements of the Insurance Department, if anything?

A. Well, that we would have to be in a position to [2093] substantiate our rate filing. He was accompanied by an actuary who was a consultant to the department by the name of Curry, C-u-r-r-y-, a retired actuary from one of the insurance companies who was a consultant to the department.

There were also in attendance other members of the rating bureau, Owen Waggoner, W-a-g-g-o-n-e-r, and others. And we asked them, in essence, what would they require when we came in with our filing for the escrow rates? And they told us we would have to be in a position to substantiate that filing.

Due to the time constraint, which I believe, I can't remember, it was relatively short, they indicated that if we filed without substantiation it would be accepted provided that within, I believe, a one year period we came in with proper statistics backing up those filings.

Q. Do you recall whether you had any discussions with Mr. Barberich about the possibility of the rating bureau filing a rate which was higher than that which was currently prevailing in the marketplace?

A. There was some discussion of that. And a question then would be the balancing of the escrow portion of the rate as against the title insurance rate. If one went up, perhaps the other would have to go down [2094] and vice versa. It was a rather general discussion.

Q. Were you acquainted with Mr. Curry, who you mentioned was a consulting actuary who was present at the meeting?

A. No. That was the first time I had met him.

Q. Was there any discussion concerning efforts by TIRBA to begin to develop information with respect to the experience of the industry under the escrow rates that were to be filed?

A. We had indicated to him that we had been gathering statistics through the Ernst & Ernst plan and, also, that we had been discussing with Dr. Plotkin,

P-l-o-t-k-i-n, of Arthur D. Little Company methodology in this area.

Q. What had been your discussions, by "your" I mean TIRBA's discussions, with Dr. Plotkin of the A.D. Little firm?

A. Well, I have trouble here with time frames, but it was my recollection that we had had general discussions with him. Some of our people, particularly those from the national offices, had had direct involvement with Dr. Plotkin in other states.

And he had developed for other states, I believe they were already in existence at that time, financial and statistical plans.

[2095] Q. And were your discussions with Mr. Plotkin relative to the initiation of a similar plan in Arizona?

A. Yes.

Q. Can you describe for me briefly how TIRBA went about determining the rates that it would file as its escrow rate filing in 1977?

A. Yes. That procedure was basically the same as that followed in 1968 in the original filings. I believe each member of the bureau was represented and brought with them copies of the various schedules and manuals which they were using.

We sat down and compared them all. There were variations. Some were a little higher in one area and lower in another area. And we picked out from those, and I can't remember which one it was, a schedule of basic escrow rates.

We also had at that time the, I believe it would have been the six year information which we had gathered and given to Ernst & Ernst to have incorporated in their figures. I believe together we had 11 years of information showing the overall profit and loss picture of the industry.

At that point in time it showed approximately, I believe, 15 to 16 percent net return. And we felt that we should stick to the historical data and, therefore, we



[2096] filed rates that were basically no change from that generally being charged by the industry at that time.

Q. Did the Insurance Department approve the escrow rate filing?

A. They accepted it on a condition which we understood to be the, and within one year we had to bring in—well, at the time of the filing, the filing indicated that we had employed A.D. Little and, in fact, I believe a letter was attached, the letter of employment or something of that nature.

JUDGE NEEDELMAN: A letter from whom?

THE WITNESS: From the bureau to Dr. Plotkin, A.D. Little, employing him for that purpose. That was attached to the rate filing. And the condition was that within the one year from that date we would come in with statistics, figures, supporting the filing.

\* \* \*

[2099] Q. Mr. Wilkie, do you recall the Insurance Department announcing a statutory examination of TIRBA in approximately 1980?

A. Yes. The bureau received a letter from the director during the year 1980 so indicating his intention.

Q. I would like to direct your attention, if you please, to a document that has been admitted into evidence as RX-93 and ask you if this is the letter to which you just referred?

A. Yes.

\* \* \*

[2101] Q. Mr. Wilkie, I would like you to switch gears again for a moment and ask you whether you are familiar with a litigation known as United States versus Title Insurance Rating Bureau of Arizona.

A. Yes.

Q. How did you become familiar with that litigation?

A. Well, at the time of that filing I was a member of the board of directors of the rating bureau and was a member of a committee that was appointed to attempt

to control the actions of the attorneys that were in that litigation.

Q. Mr. Wilkie, is it your understanding that that complaint in that case was brought by the United States Department of Justice on behalf of the United States?

A. Yes.

Q. Can you tell me briefly the nature of the allegations made in that complaint to the best of your knowledge?

[2102] A. The allegation was that the establishment of rates, escrow, of the escrow portion of the rate filing, constituted a violation of the antitrust laws.

Q. To your knowledge did the allegations made by the Justice Department on behalf of the United States involve any challenge to the filing by TIRBA of any non-escrow rates as it had been doing since 1968?

A. No, it did not.

\* \* \*

[2112] Q. Now, the hearing that was held and that resulted in RX-76 had no effect on the rates that were being charged during that time by the members of the Title Insurance Rating Bureau, is that correct?

A. That's correct.

Q. And during this hearing there was no review by the Insurance Department of the actual rates, all-inclusive rates that were being charged by title insurers, is that correct?

A. Other than the receipt of my testimony in connection with the method of the original filing.

Q. And that testimony referred to how you had gotten together and arrived at the rates, is that correct?

A. Yes.

Q. The second document that I placed in front of you we have also looked at before. It is CX-8-A through Z-12. [Letter from V. L. Siepel, Secretary-Treasurer of Title Insurance Rating Bureau of Arizona to Insurance Department of Arizona, dated March 15, 1968 with attachment.]

And I believe you testified this was the first rate manual that was filed on behalf of the rating bureau in 1968, is that correct?

A. Yes.

Q. And, again, let me make sure that I understand correctly. Prior to the filing of this rate manual there had never been any rates filed with the Insurance [2113] Department either by the rating bureau or by individual title insurance companies, is that correct?

A. That is correct.

Q. Now, these rates were arrived at at a meeting or a series of meetings where all of the companies issuing title insurance policies, title insurance companies in Arizona, brought their own rates and a consensus was arrived at, these joint rates that were then filed, is that correct?

A. That's correct.

Q. Other than the filing itself which we have identified as CX-8A through Z-12, the rating bureau did not provide the Insurance Department with any other data between the time the filing was made and the time the rates became effective, is that correct?

A. Not to my knowledge.

Q. And to the best of your knowledge the Insurance Department did not request any additional data, is that correct?

A. That's correct.

Q. And to the best of your knowledge there were no communications, meetings, telephone calls or anything of that sort between the Insurance Department and the rating bureau between the time the filing was made and the time the rates went into effect, is that correct? [2114]

A. I have no recollection of any such calls.

Q. You are not aware of the Insurance Department making public the fact that the rating bureau had made its first filing, is that correct, prior to the time the rates went into effect?

A. That's correct?

Q. The Insurance Department did not hold a hearing in connection with this filing, is that correct?

A. Not to my knowledge.

Q. And no one at the Insurance Department ever notified you that they had made a determination that they had sat down and made a determination that these rates met the statutory criteria, did they?

A. No one spoke to me personally.

Q. You are not aware of anyone in the Insurance Department preparing any type of analysis or review of this filing, are you?

A. No, I am not.

\* \* \* \* \*

[2132] JUDGE NEEDELMAN: Now, do I understand your testimony that the justification for the basic schedule and the escrow schedule appeared in stages, and correct [2133] me if I am wrong about this, first there was an Ernst & Ernst report in 1977, is that correct?

THE WITNESS: First there was the one that we put together ourselves.

JUDGE NEEDELMAN: What was that one?

THE WITNESS: That would have been '70, encompassing the years '66 through '70.

JUDGE NEEDELMAN: And then we get, what is next?

THE WITNESS: Then Ernst & Ernst.

JUDGE NEEDELMAN: In 1977?

THE WITNESS: Through '77, yes.

JUDGE NEEDELMAN: In other words, Ernst & Ernst is historical from 1970 through '77?

THE WITNESS: They also took the material we had given them and incorporated it into their report, so it went '66 to '77.

JUDGE NEEDELMAN: And then Plotkin?

THE WITNESS: Then Plotkin.

JUDGE NEEDELMAN: And Plotkin covered what period?

THE WITNESS: Well, they picked up in '78. I am uncertain at this point whether they went through '81. I know they went through '80. I think we, perhaps, had stopped.

See, the actual data isn't put together until [2134] the following year. So you are always six months behind.

JUDGE NEEDELMAN: Did Plotkin file more than one report?

THE WITNESS: My recollection is that he did.

JUDGE NEEDELMAN: A yearly report?

THE WITNESS: Yes.

JUDGE NEEDELMAN: And then the fourth piece of justification, I don't know whether you put it in that category or not, is the Tillinghast report for the state?

THE WITNESS: Yes.

\* \* \* \*

**TESTIMONY OF DELORIS WILLIAMSON**  
**JUNE 16, 1986**

\* \* \* \*

[2169] Q. Ms. Williamson, how long have you been employed at the Department of Insurance?

A. Since September 1981.

Q. And what is your present position there?

A. I am supervisor of the property and casualty section.

\* \* \* \*

[2175] Q. Ms. Williamson, I would like to ask you some questions about the organization generally of the insurance department. Now, in addition to your section that deals with property/casualty matters, are there other parts of the insurance department that are involved in the regulation of title insurers?

A. Almost every section or division within the Department of Insurance is in some way involved in the regulation of title insurers.

Q. Can you give us the names of some of those sections that are involved in title insurance regulation?

A. The corporate affairs and financial division gets involved in the actual finance and examination process. The hearing division gets involved with some of the administrative hearings that would take place. My section, the property and casualty section, would get involved, of course, with the rules and rates and forms. And the licensing section would get involved in the licensing of title agents.

Consumer affairs and investigations division would tally up complaints received against any insurer, whether title insurance was involved, and also would get involved in responding directly to consumer complaints or any kind of a telephone or written complaint regarding any insurer in the State of Arizona. And, of course—

\* \* \* \*

[2190] Q. Ms. Williamson, are all lines of insurance supervised by your office subject to the same general



statutory procedures with respect to the filing and the effectiveness of the rates?

A. Yes.

Q. Are all filings that are received in your office examined and reviewed by you to determine whether they conform to the statutory criteria?

A. Not personally by me but by either myself or someone within my section, yes.

Q. Does each filing that you receive get the same level of scrutiny by your section?

A. For the most part, yes, except I would think that sometimes we devote more time to title.

Q. Is it the practice of your office to request a clarification and additional information concerning a rate filing if you have questions about it when it is received?

A. Very much so. If there is something that just does not for one reason or another, whatever reason it may be, seem logical to us, does not seem copacetic, we will challenge that rate filing. It may be the entire rate filing. It may be a portion thereof.

\* \* \* \*

# TESTIMONY OF EMIL L. BARBARICH

JUNE 17, 1986

\* \* \* \*

[2223] A. I was employed by the Department of Insurance as their chief deputy director.

Q. And how long did you hold that position?

A. I held that job from April 1973 to July 1982.

\* \* \* \*

[2226] A. Well, as chief deputy director, the statute calls for a chief deputy director to replace the director in the event there is something that creates a situation where the director cannot do his job plus the fact that the title also calls for that job to be the supervisor of property and casualty rates. That is the official title of that particular job.

\* \* \* \*

[2227] Q. Can you describe for me briefly the nature of the review that you would make of property/casualty rate filings that were received by your office?

A. All rates, at the time when I started with the department, all rates were under a prior approval basis, which meant that every rate change that went through had to be reviewed, scrutinized and checked out carefully to be sure that it met certain criteria as the statute indicated. And if those were the situations, if it [2228] worked out, we would then approve the rate.

Q. Did the prior approval system to your recollection have any provision that made the rates effective after a period of time in the event the insurance department did nothing to approve or disapprove the rates?

A. Well, if a rate change came in and sometimes with the workload that came in, sometimes those rates came in by the dozens. And the statute said that there would be a deemer period, I think it was two months, I am not sure. If the time passed where the deemer period took effect, then the rate change was effective at that time.



Q. While you were at the department, was it your practice to generally permit rate filings to go into effect pursuant to that deemer provision without any review by the department?

A. Well, actually the companies that made the rate filings would prefer not to deem a rate or let it go into the deemer period because the statute also permitted the property and casualty people to look at the rate again. And if it was inappropriate, they could disapprove it.

Consequently, the companies who made the filing would wait until we actually approved it rather than vote the deemer period.

[2229] Q. So it was not your practice to let rate filings go by without being reviewed by your office, is that correct?

A. Very seldom, very seldom did the companies use the deemer statute.

JUDGE NEEDELMAN: What is a deemer statute? I don't want to let the record have that phrase floating around in it.

BY MR. ROACH:

Q. Can you explain what you mean by the "deemer provision"?

A. Your Honor, the deemer statute is the situation where if the department sits on a rate filing a long, long time, the company that makes the filing has the right to invoke that so-called rate increase because they didn't act in time. But it was mostly—the statute also said that once the department looked at the rate, they could revoke that rate increase and have a hearing or whatever they needed. So that it was a situation where the companies would prefer to have an approval rather than deem the rate.

JUDGE NEEDELMAN: Have it approved?

THE WITNESS: Well, if they would deem it, then it would be sort of a question of whether they could actually

use that rate forever or for whatever time they [2230] wanted.

JUDGE NEEDELMAN: I assume the phrase, correct me if I am wrong, means that under the statute if a rate is not approved within a certain period, it is deemed approved?

THE WITNESS: Right.

JUDGE NEEDELMAN: Is that correct?

THE WITNESS: Right.

BY MR. ROACH:

Q. Was this prior approval system that you have just described in effect for title insurance during the period when you were at the department as chief deputy?

A. Yes, it was.

Q. Under the system, can you explain how your office went about reviewing a rate filing when it was received?

A. Every rate filing, and I have to presume just for the rates, every rate filing had a review period. It was examined to see if it met the statutory requirements. It was scrutinized and it was either approved or disapproved. There would be sometimes situations where more information was needed and once that was obtained and it met the requirements, it would be approved.

Q. Would every filing receive the same degree of scrutiny?

[2231] A. The same degree of scrutiny was used on every rate filing that came in.

Q. Was it the practice of your office to review statistical and financial data in support of rate filings where you thought it was necessary?

A. Always. In other words, if it had to be supported actuarially.

Q. Did you ask for actuarial support for each and every rate filing that you received?

A. No, it was not necessary to do that because there was such a variety of rate filings that actuarial support

wasn't necessary in every case. The only time we would get into any actuarial support—and I have to use the whole property and casualty situation now—if a general rate increase went through on an automobile where so many people would be affected and a company had a lot of policyholders, we would seek actuarial support and the use of an actuary when necessary.

Q. So that part of your review process was to make a determination about whether actuarial data would be necessary to justify the rate filing?

A. That's right, but not in every instance.

Q. Did you have actuaries on the staff of the department to help you in doing it in the instances where you thought that actuarial review was appropriate?

[2232] A. No, we did not.

Q. How did you go about getting the actuarial help you needed?

A. Fortunately since Arizona is the sunbelt state, there were three or four actuaries who had retired in Arizona and we made use of their services and they were glad to do whatever services we would need. We really used one of those actuaries on a case-by-case basis.

Q. And these actuaries would be hired—would bill the department for their services, I take it?

A. Yes.

Q. Did you receive rate filings that were made by rating bureaus as well as filings by individual insurance companies?

A. Yes.

Q. Would rating bureau filings receive any different kind or level of scrutiny than that which was made for individual company filings?

A. Every rate filing that came in got the same treatment by scrutiny and check, whether it would be a company or whether it would be a rating bureau.

Q. So in connection with rating bureau filings, if you thought it was appropriate, you would ask to re-

view statistical and financial data in support of those filings?

[2233] A. Yes, we would.

Q. Would there be occasions when you would contact the rating bureau that had made the filing to obtain more information, if you had questions about the filing?

A. That happened quite frequently when they submitted a rate filing, we always asked—if necessary, we would request more data.

Q. Mr. Barberich, I would like to focus now on title insurance rate filings during that time period. Did title insurance rate filings to the best of your recollection constitute a substantial percentage of the rate filings that were reviewed by your office?

A. Very little, very small percentage.

Q. Can you estimate roughly the percentage of the office's activities that were devoted to title insurance filings?

A. As a basis, it was something like 5 or 600 companies that made filings in the State of Arizona and, as I recall, there were no more than 11 or 12 title companies. So that actually constituted a very small portion, possibly 2 or 3 percent of the filings that we would have received compared to the others.

Q. We have discussed generally the practices that you used in reviewing property and casualty rate filings. Were the same sorts of practices that you have just [2234] described used in connection with filings that were received in the title insurance area?

A. Yes and possibly more so because there seemed to be a bone of contention with the buying public about title insurance. Consequently, we had to delve into it a little more and use more than our proportionate share of time to get some of the answers for the people that bought title policies.

Q. Did you have more questions about filings that were made in the title insurance area than in some other lines?

A. On a proportionate basis, yes.

Q. And when you had those kind of questions or wanted to get some further information, was it your practice to ask questions of the title insurer who is making the filing?

A. Every time.

JUDGE NEEDELMAN: Title insurance was a responsibility of yours?

THE WITNESS: Yes. In the statutes, title insurance was classed as casualty.

\* \* \*

[2244] Q. Mr. Barberich, I would like to direct your attention to a document marked RX-89. This document is entitled, Profitability Analysis of the Arizona Title Insurance Industry, 1972 to 1977. And it is dated September 1978. It bears the name of the Arthur D. Little firm in the lower right-hand corner of each page.

[2245] Do you recall whether, Mr. Barberich, this is the follow-up that was mentioned in the letter that we were just looking at that you wrote to TIRBA?

A. I would presume this is the result of the discussions we had.

Q. Do you have any specific recollection about the circumstances of the filing of this report?

A. Not exactly, no.

Q. Do you recall, Mr. Barberich, do you recall receiving this report?

A. Yes.

Q. Do you remember whether you reviewed the report when you received it?

A. It was reviewed.

Q. Did you draw any conclusions about the prior rate filing or about any matters after reviewing the report?

A. My conclusions were that it was a good report, yes. And it sort of designated the area of what the title

insurance rates, the title insurance profitability was about, yes.

Q. Did the report cause you to have any doubts concerning the validity of or appropriateness of the rate filing that had been made by TIRBA in 1977, the one that we just looked at as RX-63?

[2246] A. I didn't think at that time that it would have any bearing on this because it would really, these reports merely discuss the overall profitability. But I felt that it did not have any bearing on individual approval of a particular rate filing.

Q. Did you have any concern after reading the report that the title insurance industry in Arizona might be earning excessive profits under the rates that were then on file?

A. I did not think so.

Q. Mr. Barberich, if the report had shown that title insurers were earning profits at levels higher than you thought were appropriate, would it have been the policy of the department to have taken some response?

A. Yes, it would.

Q. Do you recall, Mr. Barberich, whether in years subsequent to September 1978, there were submitted to your department any further reports prepared by the Arthur D. Little firm?

A. Yes, there were.

Q. Do you recall how many reports were submitted?

A. I believe there were three.

Q. Were these various Arthur D. Little reports, to the best of your recollection, reviewed by the director of the department?

[2247] A. Yes.

\* \* \*

[2250] Q. Mr. Barberich, I think you mentioned that you [2251] had had some interest in getting an outside third party to look over the title insurance situation in the A.D. Little reports, is that correct?

A. That's right.



Q. Can you tell me who you contacted or the department contacted, rather, in connection with that outside review?

A. Over a period we tried to find someone that could give us an unbiased look at the whole thing. There was a gentleman that was with the Insurance Department of Utah that felt that he had it and he subsequently became a professor at the University of Washington. We used him. But we thought he gave us a report which we thought didn't fit the atonement we were looking for, merely to the degree that he was terribly biased against the title people. We thought that was unfair.

Consequently, we looked to Peat Marwick and Mitchell, who agreed to take it aboard but subsequently decided not to go along.

And, finally, I knew Bill Leslie from the Tillinghast, Nelson & Warren organization who had a lot of experience in the actuarial field and I discussed this with him over the telephone and he thought he would like to try it and do an examination, give us a report.

\* \* \*

[2253] Q. How was it that you came to choose the Tillinghast firm to do the study?

A. Well, it was really Bill Leslie that we were looking to and he happened to be with that firm. His credentials were very great. He was a senior vice president with the Continental Insurance Group. He had been president of the National Council on Compensation Insurance. He was a past president of the Fellow of the Casualty Underwriters Society, also president of the American Academy of Actuaries and he had a varied experience. And so we thought he would be the person to do this.

\* \* \*

[2261] Q. Without getting into each and every title insurance related matter that came up during the course of your work as chief deputy director, was it the policy

of the insurance department to actively regulate the [2262] title insurance business during the time when you were employed there as chief deputy director?

A. Yes, it was.

Q. Was it the policy of the department to actively regulate the rates and rate filings that were made by the Title Insurance Rating Bureau of Arizona?

A. Yes, it was.

Q. During the time when you were chief deputy director, would the Arizona Insurance Department have acted promptly to correct the situation if there had been any indication that title insurance companies in Arizona were earning excessive profits?

A. Yes.

\* \* \*

[2266] Q. Now, could you turn to the next document which is RX-63 [Letter from Owen Wagoner, President Title Insurance Rating Bureau of Arizona to Arizona Department of Insurance, dated November 9, 1977, with attachments], which I believe you also discussed briefly in your direct testimony.

Now, in 1977 at the request of the Arizona title insurance companies, the legislature passed a state statute concerning escrow rates, is that correct, sir?

A. That's right.

Q. And the insurance department did not take any stand either in favor or opposed to that, is that correct?

A. Yes.

Q. So it was not passed at the request of the insurance department?

A. That's right.

Q. Now, after the statute was passed, the Title Insurance Rating Bureau made this joint rate filing we have identified as RX-63, is that correct?

A. Right.

Q. As far as you can recall, sir, you did not receive any additional information from the rating bureau in

connection with this rate filing prior to the time these rates went into effect, is that right?

A. That's right.

[2267] Q. And based on the notation, I believe, that you discussed with Mr. Roach on the third page identified as RX-63-B, which says, "subject to follow-up," did you write that notation because you had no way to know whether these rates, in fact, could meet the statutory criteria?

A. That's right.

Q. Do you recall anyone else in the insurance department being involved in reviewing this rate filing prior to the time the rates went into effect?

A. No, I don't.

Q. Did anyone at the insurance department prepare any type of evaluation or analysis of this filing at the time the filing was received?

A. Not to my knowledge.

Q. The next document you have in front of you is identified as RX-77 and it is a compilation of Title Insurance Rating Bureau of Arizona agent composite experience, underwriting companies composite experience and underwriting companies and agents' consolidated experience.

And this document, as can be seen on RX-77-B, was prepared by the company of Ernst & Ernst. Now, am I correct that you do not have any recollection of ever receiving any data put together by the Ernst & Ernst [2268] company for the Title Insurance Rating Bureau of Arizona?

A. That's correct.

Q. And you never reviewed then any data prepared by Ernst & Ernst, is that right?

A. Right.

Q. And you never used any data prepared by this company in your review of title insurance rates or any title insurance filings, is that correct?

A. Yes.

Q. Now, you discussed in your direct testimony several reports that were prepared by Arthur D. Little and submitted through the rating bureau to the insurance department.

Now, in connection with these reports, am I correct that you could recall approximately two telephone conversations that you had with Dr. Plotkin who had prepared these reports?

A. I think so, yes.

Q. And these were conversations initiated by Dr. Plotkin asking you for some information the insurance department had, is that right?

A. Probably.

Q. Now, you did not review the plans, the financial data gathering plan or the statistical data gathering plan which Dr. Plotkin put together, is that correct? [2269] Not the data, the plans.

A. No, I did not review the plans.

Q. And you never approved these plans as a result, is that correct?

A. That's right.

Q. Now, you mentioned in your direct testimony that you did receive data collected pursuant to these plans at the insurance department, is that correct?

A. That's correct.

Q. And do you recall that you told me at your deposition that you did not review these Plotkin data reports in any great detail, is that correct, sir?

A. Yes. Well, when I said I did not review it, I was aware and I looked them over but I didn't make an intense study of it.

Q. In fact, you felt these reports were considered more important by the title insurance companies than they were by the insurance department, isn't that correct, sir?

A. Well yes, only to the degree that as a rate regulator, I don't think it had that much impact on it.

Q. You did not have any discussions with Dr. Plotkin or anyone else at A.D. Little about these reports or the data?

A. No.

\* \* \* \* \*

[2283] JUDGE NEEDELMAN: In your mind was the Arthur D. Little report an adequate justification for the TIRBA rate?

THE WITNESS: No.

JUDGE NEEDELMAN: Why not?

THE WITNESS: Because the Arthur D. Little report did not support some of the answers we needed for the TIRBA rate. We need some actuarial support.

JUDGE NEEDELMAN: Be more specific. What did the Arthur D. Little report not tell you that you thought you needed to know?

THE WITNESS: Well, the Arthur D. Little report at the bottom line indicated what the profitability factor was but in my opinion it wasn't enough to support those rates because I would have to presume that it didn't lead into the support of whatever charges they had. The Arthur D. Little report gave an overview of the whole title business but it didn't, in my opinion, did not support those rates.

JUDGE NEEDELMAN: Well, again, I am going to press you on this point and I don't know if you can [2284] recall the Arthur D. Little material that clearly but I would like to know in what specific respects you felt that the Arthur D. Little report was not an adequate justification for rates?

THE WITNESS: Well, if you looked at the Arthur D. Little report, the TIRBA rates were broken down into various segments. I can't recall but it is broken down into very small segments, a rate for this and a rate for that.

There was no way, by looking at the Arthur D. Little report, that I could tell whether there was an adequacy or inadequacy in that. It was not detailed enough to

support that particular segment of the rate filing or whatever they had.

JUDGE NEEDELMAN: What about the expense data in the Arthur D. Little report? Did you consider that to be adequate?

THE WITNESS: Yes, the expense data was varied but that doesn't make up the whole rate. They have the administrative cost, the reserves and there were many other features that the rates depicted but you couldn't extract that from the Arthur D. Little report.

\* \* \* \* \*

[2289] THE WITNESS: My records show, I have a filing here that dates 1968.

JUDGE NEEDELMAN: All right. Now, I gather from your testimony, and I don't want to mischaracterize your testimony, that with the exception of the search for someone to do the critical review and the appointment of Tillinghast, the department did not do anything with respect to that basic rate between 1973 and 1982?

THE WITNESS: You are right, sir, Your Honor, except that we tried. We made a real hard effort to find someone.

JUDGE NEEDELMAN: Now, what did the department do to the best of your knowledge at the time the rate was actually filed, which goes back to 1968?

THE WITNESS: I really don't know. I would have to presume that it was the rate that was accepted and it stayed there.

JUDGE NEEDELMAN: The rate was filed in '68 but do you know when the justification for the rate was filed?

THE WITNESS: Like eight years later. You mean when did the justification for the filing—well, many years later.

JUDGE NEEDELMAN: It wasn't done until the Arthur D. Little material was filed?

THE WITNESS: That's right, sir.

\* \* \* \* \*



**TESTIMONY OF THOMAS M. FERRARO**  
**JUNE 17, 1986**

\* \* \* \* \*

[2300] Q. What was your connection to CBTU?

A. I was Chicago Title's representative to the board.

Q. Beginning at what date approximately?

A. Somewhere in 1972.

Q. And how long did your representation to the CBTU board continue?

A. Up until January of '85 when the company withdrew from the board.

\* \* \* \* \*

[2311] Q. Subsequent to the time that you were dealing with personnel from the Connecticut Insurance Department [2312] on the variable rate mortgage, did you or any one of your colleagues have occasion to meet with members of the Connecticut Insurance Department on other regulatory matters before that department?

A. Yes. I basically met with, I guess it was, with Mr. Bell and Mr. Disanto about a couple months later, I believe it was in the fall of '81, and with Robert Anderson, who was then our counsel, our local counsel in Connecticut.

Q. Where was this meeting held?

A. Hartford, Connecticut.

Q. Where in Hartford?

A. In a restaurant.

Q. What was the meeting all about?

A. Well, by this time the board had made the determination to file for a rate increase so, having a bad experience on being rejected, we decide that we should chat with the commissioner to make sure that if we go through with a rate increase, we would have the proper format, filings because it was the first one we have ever gone through. We wanted to make sure we were going to do it right. So that generally was an informative meeting.

Q. Had you already decided to file or had you filed yet or you were thinking of still filing?

A. We were on the brink of filing.

[2313] Q. How long did this meeting last?

A. A luncheon meeting, I would say a couple hours, 12:00 to 2:00, something like that.

Q. What sort of information or insights, if any, did you get from the representatives of the Connecticut Insurance Department at that meeting?

A. Well, they pretty much reiterated what we had to do, who to file, how to file, make sure that we had backup justifications. And they concluded by saying, you know, you are going to have a problem. It is not a rubber-stamp situation. We are really going to look at it because we think the rates are pretty high as they are. So we went back and that is when we decided to use the Arthur D. Little in our filing.

Q. Did you tell them at that meeting that in your view perhaps the rates weren't as high or didn't induce as much profit as you would have liked?

A. Definitely. I tried to give them the history of what we, as the industry, where we were in the previous five years as far as the industry and the tough time that some of the companies were having.

Q. Did the Connecticut Insurance Department people make any suggestion to you that they wanted something more formal and elaborate in terms of the data backup before they—

[2314] A. Exactly right, they said you are going to have to have a lot of backup information insofar as justifying the rate increase.

Q. But you had already gone ahead—

A. We had done this anyhow. We weren't sure at the time when we had the Arthur D. Little study whether we were going to use it in the matter of a rate. We wanted to know for ourselves which way we were going. So we had the study done, we spent \$10 or \$15,000 to have the study done.

\* \* \* \* \*

TESTIMONY OF IRVING PLOTKIN  
JUNE 18-19, 1986

[2377] Q. For the record, sir, would you please state your full name and business address?

A. Irving H. Plotkin, 25 Acorn Park, Cambridge, Massachusetts.

Q. By whom are you employed?

A. The Arthur D. Little Company.

Q. Would you briefly explain for us the general nature of the business of the Arthur D. Little Company which, incidentally, I assume, we can refer to occasionally as ADL?

A. Yes, we can. I am under oath to tell the whole truth, I suppose. At one point our president objected to that short form because our Arab clients confused it with the Anti-Defamation League. From my point of view I would prefer you call it ADL.

The business is not easy to describe. We are celebrating this year our 100th anniversary. We are a contract research firm started by a gentleman, Arthur D. Little, in 1886 to do analytical and physical chemistry analysis on a contract basis.

Since then the company has grown both in number of employees and in scope of work so that we do scientific and economic research on a broad variety of [2378] issues. We have around 2500 in staff, many of whom have advanced professional degrees.

Our clients are worldwide. Our annual revenues last year probably exceeded \$215 million. About 20 to 30 percent of our work each year is typically done for the U.S. Government. Another 20 to 30 for foreign governments and organizations. The balance were foundations and corporations and other interests in the United States.

We work on a case team method pulling together interdisciplinary teams of scientists, various kinds of re-

searchers, supported by computer or laboratory techniques as desired.

[2406] Q. After the early experiences which you have referred to with state regulation of title insurance did you subsequently become directly involved with the state regulation of title insurance rates?

A. Yes, I did, sir, regulation and, if you use that word to mean also continuing oversight, not merely the approval of a particular rate or rate filing.

I was asked, I would suppose you might properly say by the Ohio Insurance Department, to work with their designated statistical agent, which was the rating bureau, but working as a statistical agent of the department to put into place statistical and financial reporting plans dealing with rates. Then came the assignments in Pennsylvania, much the same purpose, and a large number of other states, Wisconsin, Arizona, New York, [2407] Connecticut.

[2473] Q. Dr. Plotkin, as I mentioned right before the recess, I would like to turn now to the subject of the reporting system which you developed for use in the state regulation of title insurance rates. As I understand it, there were basically two kinds of plans of recording systems, is that right?

A. Yes, sir. The reporting system, we use that phrase to cover two separate sets of documents, sets of schedules, each of which constituted a plan, one a financial, sometimes called an income and expense plan, and the other a statistical plan. Together they constituted a reporting system.

Q. Let's take up, if we may, first of all, the income and expense or financial system.

[2474] Basically, could you describe the purpose of that aspect of your program?

A. The financial or income and expense reporting plan is a very large collection of schedules and documents and



instructions. Its purpose, however, is fairly straightforward.

By constantly narrowing down from a huge amount of information to a smaller and smaller and more compact information, the commissioner or regulator can quickly determine the level of the rate of return achieved by the title industry for selling title insurance in his state, in all other states in which the company does business as well as the average of those two, the nationwide average, and can do so both with respect to a very broad summary number like the rate of return and also with respect to any element on the income statement or the balance sheet.

He can separate out quickly also the returns coming from the operations, on the one hand, and from the investment activities of the company, on the other. That is the goal.

To accomplish that goal so that the answers can be simply and quickly looked at, the side of looking at maybe just a few pages, is something of about an inch thickness in terms of instructions and forms that the individual companies went through which, to be done for [2475] any one state, the essence required that it be done for all 50 states because embodied in it was what was known as a 50 state spread sheet which allowed the allocations to be made on a consistent basis over the 50 individual states.

These plans, the income and expense plans, were uniformly grounded in the data which the companies filed annually with all insurance departments in which states they had operations called the Form 9 or also called the title insurance annual statement, known as the title insurance blank, which recorded all financial data, income statement and balance sheet and investment activities and underwriting activities of the companies.

And there were many supporting schedules to show precisely how any final number in the income and expense plan could be traced back and reconciled with numbers in the Form 9. This was a very important part of the

request of all the departments I worked with, that such a paper trail, an audit trail be an important part of the plan.

\* \* \* \* \*

[2483] Q. Could we turn for a moment to the statistical plans. I would want to ask you to briefly describe them and state your purpose in developing a separate statistical plan.

A. The statistical plan is very, very different from the financial plan, both in what it is, how the data are collected and its purpose. Its purpose speaks primarily, although not exclusively, to that third leg or standard of insurance regulation, the not unfairly discriminatory.

The data in the statistical plan are necessary in order to assess the structure of the rates and the impact of any particular rate structure on the insurance buying public, how much revenue comes from various kinds of policies and of various coverage levels, \$5,000, \$10,000, owners versus mortgage, initial rate versus reissue rate, various kinds of endorsements, how many such policies are written, and does allow the construction of estimates based on a model of the economics of the [2484] industry of the profitability, in a sense, or the contribution margin, I really should say, of various classes of business.

The plans also gave data necessary to answer a very different kind of question, not what is the current cost subsidies from big policies to little policies, the current discrimination to rates, but if the regulator were presented with a rate filing which did not say, as many of them did, we propose to increase all rates 10 percent, which I will call a uniform increase rate filing, but a rate filing that says, we propose to increase mortgagor's insurance by \$5 a thousand, and owners insurance by 1 and lenders insurance by another, we propose to change the distribution of the rate so that policies above \$100,000 would be increased proportionately more than policies below \$100,000—and all of these things are things that



are actually done. I am not using them as examples, they are real world examples—to institute a uniform fee of \$5 per policy issued across the board no matter what the value of the policy.

You would need the data collected in the statistical plans to make reasonable estimates of the likely future impact on revenues and costs of proposed changes in the rating structure. You do not need it to [2485] make statements of the likely impact on revenues and costs of a uniform change but where you get the sophisticated changes, whether they are over the whole process or only over a small piece of the process, you need the statistical data to make, I believe, to make well-informed estimates of their impact.

\* \* \* \*

[2490] Q. The annual financial and statistical reports which were produced on a regular basis were eventually utilized by your recollection in approximately how many states?

A. You have in excess, I think, of 17 states that I know of directly that used financial and/or statistical data, at least financial and in some cases also statistical data in their regulatory processes. And I know there were other states that used it but that I was not directly involved in.

\* \* \* \*

[2577] It evolved to a more formal—well, it was a formal relationship. It evolved into more formal products when it was mutually determined that the gathering of financial and statistical data was desired by the regulator after a hearing held by them, felt necessary for their regulatory purposes. Though, interestingly, it did not stem from a concern of excessive prices. Perhaps I am rambling on too much.

It stemmed from a concern that it was obvious to them that profits were not excessive. However, they were concerned that that may well have been caused by excessive

costs in the form of commissions and the like and that really was sort of the first thing that focused [2578] on the trade practices.

\* \* \* \*

[2586] Q. Can you summarize for the court the nature of your testimony, at least by way of the subjects you discussed?

A. I discussed at length and in great detail all that I had come to understand about the economics of title insurance, the nature of the product, the nature of its costs and how this related to what was generally known about the rate regulatory process of insurance in general, what costs and what revenues, including investment revenues you bring to the table, how you can use investment income.

I spoke about many things at length in terms of the methodology of rate regulation and the use of investment income and rate of return that would not necessarily have been required of Stan DuRose himself who was, in fact, still the commissioner.

However, just before the hearing, maybe within the week or so that the hearing was to commence, a new commissioner had been appointed by the governor, Commissioner Wilde and Stan DuRose resumed his position as chief deputy. So Commissioner Wilde sat on the podium and Stan DuRose at his right hand and constantly sort of whispering to them and both of them asking questions.

And I remember Stan telling me before the [2587] hearing that this was a very good opportunity to give the commissioner his total education, the possible new commissioner, brand new to the job of being an insurance commissioner and new to insurance, as best I could tell, to give him his total education. While he may have been new to insurance, he wasn't new to economics and he asked many questions from the point of view of someone generally schooled in economics and political science.

Q. Do you recall that you mentioned that Commissioner Wilde and I guess at that time Deputy Commis-

sioner DuRose was present representing the department at that hearing. Were there other members of the department present?

A. Yes, there were a large number, both on the podium itself and in the hearing room sort of around the sides. I really should say to be frank, this was the new commissioner and maybe some members of the department turned out to observe him at close range first hand. And this is one of his first public undertakings.

Q. Do you recall whether ADL completed the design of a financial and statistical reporting system for use in Wisconsin?

A. Yes, sir. Working with the insurance department and the bureau, we constructed both a financial reporting plan and a statistical reporting plan.

[2605] Q. Dr. Plotkin, as you observed the regulators over the period of time we have been talking about, is it your opinion that the State of Wisconsin was actively regulating title insurance rates in the State of Wisconsin?

MS. BAULIG: Objection.

JUDGE NEEDLEMAN: What is the objection?

MS. BAULIG: I think it would be appropriate to hear what Dr. Plotkin testifies as to what they did, rather than what his opinion is as to actively regulating.

JUDGE NEEDLEMAN: The objection is overruled. The expert may testify to the ultimate legal issue in the [2606] case under modern practice under the federal rules. You may answer the question, Mr. Witness.

THE WITNESS: Yes, sir. At the highest level, at the commissioner's level, they carefully looked at, understood, questioned all the aspects of the operation of the industry, the data that was submitted. They were not even satisfied to go with the industry's, if you will, quick and dirty version of the pro forma analysis one year after having a full-blown version and asked: Well, does this person, if I may say it, propose some confidence and what is his opinion on it?

I would say that that is what I as a regulatory economist would consider active regulation and conscious regulation, regulation with understanding, not just a form of regulation.

Q. Dr. Plotkin, were you and Arthur D. Little [2607] engaged to assist in the process of title insurance rate regulation in the State of Arizona?

A. We were, sir.

[2611] Q. Do you recall any subsequent discussions on the subject of a possible rate hearing either with Commissioner Trimble or his successor?

A. Well, he was succeeded, I believe, by Commissioner Low, Mike Low, who became very, very interested in all matters relating to title insurance, not only the rates and statistical and financial plans but more importantly why the profitability was not greater. This was something that sort of begged for explanation.

[2614] Q. I take it that financial and statistical plans were ultimately prepared by Arthur D. Little and submitted to the department?

A. Yes, sir, although it was more interactive. Drafts were submitted. We showed them models used in other states and ultimately a final form of each plan was printed up by us and submitted to both the bureau and the department.

Q. Did the department accept the plan ultimately for utilization in Arizona?

A. They accepted them and they understood and encouraged cooperation on the part of the companies. I reported to them that the companies had told me they would fill them out.

There is also a hiatus. You put the plan in effect but you don't know until you actually get the data whether the companies are going to cooperate.



[2617] Q. Let me ask you briefly, Dr. Plotkin, to turn to the exhibit which has been identified in the record as RX-92. This appears to be an economic analysis of the Arizona title insurance industry bearing the date of September 1980 for the years 1972 through 1979.

Would you describe this document?

A. Yes, sir. This is, as you said, an economic analysis, meaning it contained both statistical and financial results. It was, I believe, the first year in which we had the statistical results and as such, if you notice, it is stamped "draft." And the cover letter on your exhibit is a letter where the president of the rating bureau was sending the draft at our request to all member companies.

We noted to him that based on some recalculation there was a change of one decimal point in one number on one table but the main point is we wanted the companies to carefully go over the statistical data and the appendices laying out the codes to be sure that they were reporting to us under the right codes and that they were [2618] willing to sign off that this fairly represented what they were reporting to us.

I believe that other than the arithmetic changes, that this was the final document, that this per se, these pieces of paper are the final document.

Q. It is your testimony that this is a draft of a report, an additional report which was ultimately submitted to the insurance department with the changes you referred to?

A. Yes, sir.

Q. Let me then ask you to turn to RX-493. Is RX-493 the last in the series of the economic analysis reports prepared by ADL and submitted to the department?

A. It is the last I have in front of me now and I believe it may have been last in the series but again, without checking records, I can't answer that for you definitively.

Q. Would you turn to Table 7 on page 11 of this exhibit and also look at Table 10 on page 4? I am sorry, Table 10 must be on a different page. It is page 14.

What do these tables represent?

A. They set out the rates of return on total capital as calculated by us, achieved on the one hand in Arizona by the title insurers in Arizona, and, on the other hand, in Table 10 by those companies reporting [2619] under the FTC/SEC data collecting reporting system.

Q. And they do so for the years during which you were preparing all of these reports and for an average, a nine-year average, is that correct?

A. Yes, sir.

Q. Based on the rates of return evidenced by these tables and the underlying data contained in this report, were you able to reach an opinion as to whether the rates in Arizona during this period of time were excessive?

A. Yes, sir, although the basis of such an opinion was not merely the data in this report, also my background understanding of rates of return achieved by alternative investments and the relative riskiness of various kinds of investments, corporate and instruments.

Q. All right. Based both on these reports and the other understanding or knowledge which you came to have about Arizona, is it your opinion as an expert in the state regulation of title insurance rates, would it be your opinion that these rates of return suggest any basis for questioning whether the rates were excessive during this period of time in Arizona?

A. I think, while the question is fair to ask, studying the achieved returns, looking at the volatility would lead to the answer that there is no evidence of excessivity. Again, for many of the reasons, although I [2620] would point out that the achieved returns here were higher than the achieved returns we looked at in the other states, they were equally volatile and they were still below what would be a very conservative standard, one possible standard, the average for FTC/SEC. Also, we are now into the period of high inflation, high interest rates, high alternative rates of return for alternative investments.



And all that has to be brought into actually answering the question.

. . . . .

[2621] Q. Dr. Plotkin, do you recall the circumstances which led to the termination of the financial and statistical reporting systems which you had developed for the regulators in Arizona?

A. Yes, sir. It is simply you can't make bricks without straw. The molds remain. The systems remain. The companies informed me on advice of their outside counsel, antitrust counsel, that they were unwilling to supply the data to me that I would then aggregate and give to the insurance department because of an order issued by, I believe, Judge Muecke, I believe his name is Muecke, his last name was Muecke, Federal Judge Muecke.

Q. Do you recall discussing these circumstances with Commissioner Low?

A. Yes, quite vividly because he expressed, as did I, a certain degree of frustration. He clearly wanted the data for his purposes of continuing to monitor the industry, making the record in his department of what was happening.

[2622] He wanted the companies to supply the data and they kept on saying, well, they couldn't unless they got some protection, some orders, some document. He was trying to work with his attorney general and the attorney general's office to write something, take it to the Judge to sign.

There was a question of if he appointed us directly his statistical agent rather than having the bureau be the statistical agent and the bureau retain us, whether that could make a difference, various avenues were discussed, lots of time was discussed on how the bridge could be crossed.

I pointed out that time was of the essence, especially the statistical data could not be recaptured without huge economic expenditure if it was not gathered currently, contemporaneously. The financial data could be recap-

tured with maybe just a little cost and accuracy. And he certainly was trying every which way to see. He was thwarted, however, by the adamants, as I understood it, of the counsel of the company interpreting Judge Muecke's order and the inability of the state attorney general to be willing to work out something that would give the protection to the companies they felt they needed.

I cannot tell you all the details of that but I [2623] knew the implications were that you couldn't get the data. He wanted the data. There was nothing I could do or he could do to obtain the information.

. . . . .

[2624] Q. Dr. Plotkin, is it your opinion, based on your experiences and your observations in Arizona over the period of time we have been discussing, that the state regulators of title insurance in Arizona were actively regulating rates for title insurance in that state?

A. Yes, and in much the same way that I answered that question with respect to Wisconsin. At the highest level, the commissioner was involved, aware, intellectually cognizant of all the aspects of the regulated companies.

. . . . .

[2625] Q. All right. Let me show you a document which has been identified as CX-30-A in this proceeding which I gather is a covering letter with a number of attachments.

My question is simply whether this document and its sub-parts, whether it contains a report prepared by Arthur D. Little?

A. As I read this entire document, it is a cover letter enclosing three items. One and only one of those items was prepared by Arthur D. Little, namely the item identified as Appendix A, which is the profitability analysis for the years '76 through 1980.

Arthur D. Little had no involvement with the materials identified as Appendix B or C.

Q. All right. Let me ask you to look at table 4-A of your report, which I believe is on page 21. And if you could, at the same time, look at the table on page 27, [2626] which is Table 5.

A. I have those two, sir.

Q. Those tables represent what sort of information, Dr. Plotkin?

A. They present our calculations of the return on total capital achieved by the Connecticut title companies in Connecticut for the years '76 through '80 and gives the five-year averages and then presents for the year '68 through '80 our calculation of the return on total capital of FTC/SEC companies and also gives an average for the same years as those in Connecticut in '76 through '80 and the years '70 through '80.

Q. Looking at these tables and more specifically at the rates of return reflected therein, are you able to reach any opinion as to whether the rates in Connecticut represented by this period of time were excessive?

A. Yes, sir.

Q. Would it be your opinion as an expert in state regulation of title insurance rates that these rates of return suggest any basis for questioning whether the rates were excessive?

A. I sort of lost the sense of whether it is a yes or no but I find no basis in the observed profitability stemming from the rates to suggest that the rates are excessive. And again I think the graph at page 28 is [2627] useful, as are some of the other graphs, such as the graph at page 26 in helping to understand how I reached that answer.

\* \* \* \* \*

[2691] Montana had an extensive hearings and they brought in the chief deputy from California, who had just recently retired from that position, to be their special hearing officer on the whole nature of title insurance.

In fact, the presentation I made before him was identical to the presentation I made yesterday here, the whole economics of title insurance and then specifically how it relates to the controlled business problem and whether title rates are unduly inflated by controlled business.

The interest, I should say, of the insurance commissioner in controlled business is only really, not to make value judgments if someone is unduly enriching themselves but whether that inflates the price of insurance unduly.

\* \* \* \* \*

[2717] Q. So I gather that although the original purpose for the convention of this proceeding was to consider the controlled business issue, that this proceeding, like other controlled business proceedings, also included a discussion of profitability of title insurers?

A. And their rates, yes, sir.

Q. Would it have been fair to have characterized this proceeding as, I believe you characterized some of these proceedings generally as what I think you called in your cross-examination a mini-rate review?

A. Let's say a back-door rate review, that the current level of rates were passed in a review by looking at profitability issues in order to really—I brought that up to contrast it with the profitability of these controlled business agencies which got the retentions and had very little expense.

\* \* \* \* \*

## TESTIMONY OF WALDO R. DI SANTO

JUNE 20, 1986

\* \* \* \* \*

[2724] Q. Could you please state your full name and business address for the record?

A. My name is Waldo R. DiSanto, D-i-S-a-n-t-o. I am director of the Property and Casualty Rating Division, Connecticut Insurance Department, Address 165 Capital Avenue, Hartford, Connecticut 06106.

Q. Could you repeat again what is your title with the Insurance Department?

A. Director of the Property/Casualty Rating Division.  
[2725] Q. Does this division have regulatory supervision over title insurance rates?

A. Yes.

Q. What exactly are your functions as director of the Property and Casualty Rating Division?

A. To review filings and submissions made by insurance companies, rating organizations, to determine whether the filing conforms with the statutory standards of Connecticut law.

Q. Could you tell me what those statutory standards are?

A. Yes. The primary standard are that rates shall not be excessive, inadequate nor unfairly discriminatory.

\* \* \* \* \*

[2736] Q. Do you recall receiving the 1981 request for a rate increase?

A. Yes.

Q. Do you recall prior to receiving this request for a rate increase meeting with any members of the Connecticut Board of Title Underwriters to discuss the possible need for a rate increase?

A. Yes.

Q. Can you recall the general substance of this discussion, I am sorry, let me back up.

[2737] Can you recall offhand who the people were that you met with?

A. I can recall one of the gentlemen. I believe Mr. Bob Anderson. That is all I can remember in names at this time.

Q. Do you remember the substance at all of these discussions?

A. The substance of the discussion was the general problems of the industry, the need for more revenue, the state of the real estate market at that time, interest and inflation and those kinds of things.

Q. Do you recall offhand having discussed any other method of tackling these problems other than a rate increase?

A. Yes.

Q. Can you just generally tell me what the nature of that discussion was?

A. The discussion centered around the expense component in the rates, more specifically the, in my terms, the disproportionate allowance for commissions paid in connection with title insurance.

Q. And can you just explain very briefly, I think I will discuss this in more detail later, why the issue of commissions was relevant to the concerns that were raised at the meeting about the title insurance industry at the [2738] time?

A. Well, in the one case the increase in revenues in insurance is made by increasing the rates, which ultimately increases the premiums, which reflect the component costs of the various expenses of doing commission, or of doing an insurance business, less a loss adjustment expense.

In title insurance the expense component, primarily because of very high, in my view, commissions, leave a short balance of available dollars to pay the primary function of insurance, the risk element and the loss adjustment expenses.



JUDGE NEEDELMAN: Excuse me. Read the last phrase back, Mr. Reporter.

(The reporter read the record as requested.)

JUDGE NEEDELMAN: Continue your answer, Mr. DiSanto.

THE WITNESS: Briefly I think that that is my answer, Your Honor.

JUDGE NEEDELMAN: Continue.

BY MR. RUDOLPH:

Q. Did you suggest at this meeting that perhaps efforts should be made to try to control that element of insurer's costs?

MS. BAULIG: Objection, leading.

[2739] JUDGE NEEDELMAN: Objection overruled. Continue.

BY MR. RUDOLPH:

Q. You can answer the question.

A. Would you please repeat the question?

Q. Did you address with the people with whom you met at this time possible methods of trying to control what you perceived to be these excessive commissions?

A. Yes, commissions, in my view, commissions in the title insurance system have kind of been a sour point, if I can describe it that way, and it has been kind of a constant item for discussion when I meet with or when I had met with title insurance people, the rating organization member representatives.

And I had discussed alternative ideas to reflect or to limit a more appropriate, in my view more appropriate, commission expense.

\* \* \* \* \*

[2741] Q. Do you recall your reaction when you received this filing?

A. Well, it is a voluminous and complex document. I guess my reaction is that it is going to take some time to review and resolve.

[2742] Q. Focusing on the filing itself, did the rate filing that you received contain any justification for the proposed increase, support or justification?

A. I believe it does, yes, sir.

Q. Did it contain any analysis that supported, that attempted to support the requested increase?

A. Yes, sir, I would say yes.

Q. Let me draw your attention—I am sorry, go ahead.

A. My recollection is that the document is well supported and detailed.

\* \* \* \* \*

[2743] Q. Did you review this justification during your consideration of the proposed rate increase?

A. Reviewed this document, yes.

Q. Could you describe for me generally your process of reviewing this document?

A. We review the submission, we read it, review it, take notes, make notes. If we have any questions, if we find any questions we don't understand or we find any errors, to that extent we seek additional information, discuss it with other people on our staff, et cetera.

Q. Could you tell me, if you know, who prepared the supporting material?

A. Arthur D. Little Company.

Q. Did you have any cause to doubt the accuracy of the figures used by Arthur D. Little to support its conclusion about industry profitability in Connecticut?

A. Could you please repeat that question?

Q. Sure. Did you have any cause to doubt the accuracy—I will tell you what, why don't I take a step back and ask you another question to help you out.

Upon review of this filing and the supporting materials, what was your conclusion about the need for a proposed rate increase by the title insurance companies?

A. Well, based on the documents in the entire filing, that I believe this supported the need for— [2744] satisfied the requirements of the statute in connection with the filing of rates or rate increases, sorry, filing of rate increases.

Q. Did you have any cause to doubt the accuracy of the figures used by Arthur D. Little to support its conclusions reached in the justification that you received?

A. No, sir.

Q. Did you have any cause to challenge Arthur D. Little's statistical reporting plan contained in that filing?

A. In balance I felt that the document supported the proposed increase, was well documented and would support, and on that basis it was accepted for its intended purpose.

Q. Do you recall if anyone else in your department reviewed this filing?

A. Yes, I do. I do recall. A Mr. Walter Bell of our department reviewed it, did look at it, yes.

Q. Did you discuss this filing with him or anyone else in your department?

A. I cannot recall the extent to which I may or may not have discussed it with anyone else.

Q. In your view as a person responsible for rate review and approval in Connecticut, did this filing [2745] satisfy the requirements of state law concerning title insurance rate filings?

A. Yes, sir.

Q. Was this filing ultimately approved?

A. Yes, sir.

\* \* \*

[2747] Q. Do you believe that your review of this filing was sufficient to satisfy your obligations under the insurance statutes and regulations of the State of Connecticut?

A. Yes.

Q. Has anyone with any Insurance Department, the State Government or anywhere in the state ever suggested

that your review of this rate filing fell below the standards specified by state law for review of rate filings?

A. No one has suggested that.

\* \* \*

[2756] Q. Can you review that document very quickly and tell me whether this document refreshes your recollection as to whether or not you met with anyone at the CBTU concerning the 1983 filing?

A. Yes, I remember now, yes.

Q. Can you just briefly relate, if you recall, the nature of the discussions you had at your meeting with the Connecticut Board of Title Underwriter representatives?

A. Again, one of the things discussed was the impact of commissions and a discussion of alternative means that could effectively address the disproportionate expense loading for commissions.

Q. Do you also recall having discussed the filing [2757] itself at this meeting with these representatives of the CBTU?

A. May I dig out the filing that this is referring?

Q. Yes, please. That is CX-32-A through CX-32-X.

A. Yes. A Mr. Bell also worked on this filing, Mr. Bell with our department.

\* \* \*

Q. Other than the three filings that we have discussed this morning that we have delved into, were there filings by the CBTU that affected forms of coverage or had any effect on rates for specific types of coverage?

A. Yes, I can recollect there was a zoning [2758] endorsement, a variable rate endorsement and a condominium endorsement.

Q. These were endorsement filings?

A. Yes, but endorsement filings can sometimes affect the rate, okay, or the price, the price, the ultimate price of the premium, yes.

Q. And in addition to these endorsement filings were there form filings by the CBTU over the years that you have been regulator?

A. Yes, sir.

Q. Did you review all of these filings, I am sorry?

A. I myself or the department reviews every filing that we receive, yes, sir.

Q. Is there any method that you employ within your department to especially demonstrate that you have reviewed and approved such filings?

A. After a filing is approved or accepted or disapproved, the evidence of its approval is a stamp with the name of the person who has reviewed it indicating a date.

The disapprovals generally are accompanied by a written letter or, in some cases, we make a notation on the filing itself disapproved, see attached, withdrawn, see attached, okay.

Q. If a filing has a stamp and a signature of [2759] approval on it from your department, does this demonstrate that the document has been reviewed by your department?

A. Yes, sir.

Q. Can you define or describe for me generally what an endorsement filing is, specifically with respect to title insurance business?

A. An endorsement is an addendum or a rider to a standard policy form which amends or modifies the policy document. It obviates the need for then incorporating the addendum language into a new policy.

Q. Are these endorsement filings reviewed by someone in the department?

A. Yes, sir.

Q. Do you employ the same method of stamping these if you approve of them upon review?

A. Yes, we use the same procedures with endorsements as policy forms or even rate filings.

Q. Are you familiar with any endorsements filed by the Connecticut Board of Title Underwriters that were disapproved or otherwise challenged by your department?

A. The variable rate endorsement, a zoning endorsement, condominium endorsement were either revised, withdrawn or disapproved.

\* \* \* \* \*

[2771] Q. Do you believe that the Insurance Department reviews and supervises rate and form filings of title insurers in Connecticut in a manner that is consistent with the state statutory requirements?

A. Absolutely, yes.

[2772] Q. I believe you testified earlier that in excess of 2,000 insurance filings come through your office every year, is that correct?

A. That is correct, yes.

Q. Your department reviews all of those filings?

A. Every single one, yes.

Q. Does your department devote the same amount of time and resources to each of these filings?

A. Obviously not. The filings have different significance. One filing may involve \$400 million of insurance premium a year. Another may be an endorsement which just changes, a policy form which changes the logo of the company or the name or address.

Q. Do you feel that it is part of your responsibility as an insurance regulator to determine which of the many filings that you are asked to review may merit greater or lesser scrutiny?

A. Yes, sir.

Q. Do you believe that it is consistent with your role as a regulator to determine to devote less time on one filing than you would on another?

A. Yes, sir.

\* \* \* \* \*



**TESTIMONY OF WALTER SHAW BELL**  
**JUNE 20, 1986**

\* \* \* \* \*

[2824] Q. Mr. Bill, would you please state your full name and business address for the record?

A. My name is Walter Shaw Bell. My business address is 165 Capital Avenue, Hartford, Connecticut, insurance department.

Q. Are you currently employed?

A. I am currently employed by the insurance department in the State of Connecticut.

Q. What is your title at the insurance department?

A. I am an associate examiner in the casualty property rating division.

Q. And can you please tell me what your [2825] responsibilities are as an associate examiner?

A. My responsibilities are to review rate rule and form submissions from insurance companies for a variety of lines of business and to take appropriate action in connection with them.

\* \* \* \* \*

[2826] Q. Mr. Bell, were you at the department when the Connecticut Board of Title Underwriters filed for a 20 percent across the board rate increase in 1981?

A. Yes.

Q. Do you have any knowledge as to how long it had been since a prior similar increase had been sought if at all by the Connecticut Board of Title Underwriters?

A. I believe that was the first filing in 15 or 20 years.

Q. Did you have any responsibility for reviewing the 1981 rate filing by the Connecticut Board of Title Underwriters?

A. Yes.

MR. RUDOLPH: Off the record.

(Discussion off the record.)

JUDGE NEEDLEMAN: Back on the record.

BY MR. RUDOLPH:

Q. Do you recall receiving this filing when it came in in 1981?

A. Yes.

Q. Do you recall what your reaction was when you saw this filing?

A. That it was a significant increase that was [2827] being requested and one had not been made before.

Q. Can you find in your materials there a document numbered CX-30-A through CX-30-Z-98. It is a thick document.

A. Yes.

Q. Have you got that in front of you?

A. Yes.

Q. Is this the rate filing to which we have been referring in previous questions?

A. Yes, it is.

Q. Did you personally review this rate filing?

A. Yes.

Q. Can you describe for me the steps you took in reviewing this filing?

A. Yes. I read through the cover letter from the Connecticut board and I read the information that was attached to it.

Q. When you say you read the information that was attached to it, did you read the report that has been referred to as the Arthur D. Little report?

A. Yes.

Q. Did you read this complete report from cover to cover?

A. I believe so, yes.

Q. Do you recall any conclusions that you reached [2828] upon completion of your review of this filing?

A. I recall thinking that it was a charge that was not too significant in the total dollars and it reflected, I made a comparison against a previous filing during the year on variable rate mortgages.

Q. And what was your conclusion as to whether or not you felt that the request for the 20 percent rate increase was justified?

A. My conclusion was it didn't appear unreasonable.

Q. You testified that you recall reading the cover letter that came with this filing?

A. Yes.

Q. After your review of the justification submitted with the filing, did you believe that the cover letter set forth an accurate assessment of the CBTU's apparent need for the rate increase?

A. Yes.

Q. Do you recall discussing this filing with Mr. Di-Santo at all during the course of your review?

A. Yes.

Q. Do you recall specifically what you might have discussed?

A. I believe I discussed the thickness of the filing and time involved in reading it. I believe I took it home, I can't recall for certain whether I had taken [2829] the filing home to read. And I believe I said it took time.

Q. Did you say, you said the thickness of the filing?

A. Yes.

Q. Do you believe that your review of this filing was sufficient to satisfy your obligation as an employee of the State of Connecticut Insurance Department?

A. Yes.

Q. Do you believe that your review of this filing was sufficient to satisfy your obligations under the insurance statutes in the regulations of Connecticut?

A. Yes.

Q. Did you have any cause in the course of your review of this filing to call into question the accuracy of any of the figures that were provided by Arthur D. Little in the justification that was filed with the filing?

A. No.

[2831] Q. Did you have any cause to question the conclusions that were reached in the Arthur D. Little report

concerning the profitability of the title insurance industry in Connecticut during the period covered by the report?

A. I am sorry. Could you repeat?

Q. Did you have any cause to question the conclusions that were reached in this report concerning the profitability of the title insurance industry in Connecticut during the period that was covered by the report?

A. No.

. . . . .

[2833] Q. I would like to turn now briefly and talk about a 1983 filing by the CBTU and ask you a few questions about that, if I might. I would like for you to look at a document labeled CX-32-A through CX-32-X. Have you got that?

A. Yes, sir.

Q. Did you have any responsibility for review of this filing?

A. Yes, I did. I reviewed it for the department.

Q. Can you tell me what this document represents?

A. It is a filing by the Connecticut board to make various changes in its manual for providing title insurance. It removed the all-inclusive rate structure from the manual and amended certain other pricing [2834] mechanisms within the manual.

Q. Do you recall why the all-inclusive rates were being removed from the CBTU manual in this filing?

A. I believe it was to update the manual to reflect the fact that the title insurers in Connecticut no longer employed an all-inclusive rate structure. The business did not operate in that manner.

Q. Did the removal of the all-inclusive rate result in any change in the basic rate that existed in 1983 in the manual?

A. No.

Q. Did you deem it necessary to engage in any analysis of the propriety of the approved attorney rate that remained in the 1983 filing?

A. No.

Q. Why was that?

A. We generally only review a filing submission to review the change that has occurred. We receive an enormous number of filings each year. We don't go back and review something that has already been done generally.

Q. This rate was already in effect?

A. Yes.

Q. Did you perceive of this filing as a mechanism for bringing more revenue into the title insurance companies or rather simply as an effort by the CBTU to [2835] update the language of its manual to current industry practice?

A. Principally updating of the manual.

\* \* \*

[2842] Q. Do you believe that the insurance department reviews and supervises rate and form filings of title insurers in Connecticut in a manner that is consistent with the statutory requirements?

A. Yes, sir.

Q. You testified earlier that you see about 2,000 filings come through your office in the course of a year, is that correct?

A. Yes, sir.

[2843] Q. Do you review all of these filings? Does your department review all of these filings?

A. Yes, sir.

Q. Does your department devote the same amount of resources and time to each of these filings?

A. No. The amount of time depends on the need for the individual filing and judgments made based on what the filing proposes to do.

Q. In your view, are these judgments a part of your function as a regulator in the State of Connecticut?

A. Yes.

\* \* \*

# **TESTIMONY OF ROBERT STATTON**

**JUNE 30, 1986**

\* \* \*

[2853] Mr. Statton, will you state your full name and business address.

A. Robert L. Statton, 13640 Roscoe Boulevard, Panorama City, California.

Q. By whom are you employed?

A. SAFECO Title Insurance Company.

Q. How long have you been an officer of SAFECO Title Insurance Company?

A. A little over 30 years.

Q. How long have you worked with the Title [2854] Insurance Industry?

A. A little over 40 years.

\* \* \*

[2855] Would you describe your involvement with the Montana Rating Bureau?

A. I was Director of the Montana Rating Bureau.

Q. For how long did you serve on the Board of Directors?

A. From its organization until the company resigned.

\* \* \*

[2858] Q. You mentioned a meeting with the Insurance Department officials in connection with this filing.

Could you describe that meeting, what occurred?

A. Yes. That was on February 22, 1983. I went to Helena, Montana, and met with Sonny Omholt who was then Director of the Insurance Department, the Commissioner. I told him the purpose of my visit, talked in general for a little while. Then he stated Mrs. Erickson was actually in charge of the title insurance and title insurance rate filing. He escorted me over to her office, stayed for a couple minutes, and left me with Mrs. Erickson.



Q. Did you discuss the filing with Mrs. Erickson?

A. Yes. We took a look at the filing, discussed the filing for a while, talked about its contents and discussed also what type of justification they would want as far as statistics.

Q. Can you amplify what sort of justification you discussed?

A. In addition to the items that were in my letter, the Rating Bureau had in the final paragraph of the letter said that they would gather some statistics. We had to be certain that the statistics we gathered [2859] were compatible with that of the Insurance Department.

At that particular time the standard for financial data had been somewhat standardized into an American Land Title Association format of financial gathering. That was the same format they were interested in.

In other words, they didn't need policy type statistics or things like that. They were more interested in the financial statistics and it was finally decided that the ALTA format would be acceptable.

Q. Did the Rating Bureau implement this plan to collect data?

A. Yes.

\* \* \* \* \*

[2865] Q. [Y]ou delivered this filing on February 22, 1983; is that right?

A. That is correct.

Q. Now, prior to February 22, 1983, you did not have any meetings or other communications with anyone at the Insurance Department regarding this first filing by the Rating Bureau?

A. The only communication I had was to call the Commissioner and make the appointment.

Q. When you arrived at the Insurance Department, I believe you said you met briefly with the Insurance Commissioner, Sonny Omholt?

A. Correct.

Q. You did not discuss the substance of the rate filing?

A. No.

Q. He directed you to Mrs. Erickson as the person who dealt with title insurance?

A. Correct.

Q. You had no other meetings at any time with Mr. Omholt concerning anything to do with the Rating Bureau; is that right?

A. That is correct.

Q. Your only meeting with Mrs. Erickson [2866] concerning the Rating Bureau was this meeting on February 22, 1983, when you brought the filing identified as CX-41-A through W [Letter from Robert Statton to Montana State Auditor and Commissioner of Insurance, dated February 18, 1983, with attachments.]?

A. That is correct. I had one subsequent telephone conversation with her.

Q. In that telephone conversation, I believe you called Mrs. Erickson to tell her there was an error in the filing?

A. That is correct.

Q. Then you also sent Mrs. Erickson a letter that same day with a new page?

A. I did.

Q. That is the other conversation you were speaking of?

A. That is right.

Q. Apart from that phone conversation and meeting on February 22, you had no contact with Mrs. Erickson?

A. No.

Q. Now, Mrs. Erickson had not seen this filing prior to the meeting?

A. She had not.

Q. Yet a stamp on the upper right-hand corner of CX-41-A was placed on the document while you were still at the Insurance Department on that day that you delivered the filing; is that right?

[2867] A. That is right.

Q. CX-41-B, the second page of your cover letter and the next couple of pages contained a discussion of title insurance industry profitability; is that right?

A. That is correct.

Q. All of the profitability figures and all of the statistics in the cover letter are national figures?

A. Yes.

Q. You did not compute the profitability of the Montana operations of the Rating Bureau members?

A. I had nothing to compute them with unless I gave them our own company's, because there is no way you are going to trade statistics, we just don't share our own operating figures.

Q. So, this document that you provided to the Insurance Department did not contain Montana statistics?

A. That is correct.

Q. You did not provide the Insurance Department with expense data for the Montana Operations of the Rating Bureau members?

A. That is correct.

\* \* \* \* \*

[FTC COMPLAINT COUNSEL'S TRIAL EXHIBIT  
CX 30 A, B]

CONNECTICUT BOARD OF TITLE UNDERWRITERS

5 Landmark Square, Suite 200

Stamford, Ct. 06901

(203) 964-0180

December 3, 1981

The Honorable Joseph C. Mike

Commissioner of Insurance

State of Connecticut Insurance Department

P. O. Box 816

State Office Building

Hartford, Connecticut 06115

Re: Connecticut Board of Title Underwriters  
Rate Filing

Dear Sir:

The Connecticut Board of Title Underwriters ("the Board") hereby proposes an overall rate increase of 20 percent to become effective on or about December 20, 1981.

As you may know, the Board has not increased rates since its original rate manual was adopted in August, 1966. Since that time, every effort has been made to hold down costs and expenses so that title insurance protection could be made available to Connecticut consumers at the lowest possible price. However, recent substantial losses of member companies mandate the present increase.

The Board recently retained Arthur D. Little, Inc. ("ADL") to conduct a study of the profitability of the Connecticut title insurance industry. Enclosed as Appendix A is a copy of ADL's report dated August, 1981 ("ADL report").

The ADL report demonstrates (see pages 21 and 24) that our industry earned an after-tax rate of return on total capital of only 2.40 percent for the years 1976

through 1981. By comparison, the average rate of return on total capital earned by other private enterprise companies for the same period was 12.01 percent (pages 25 and 27). In the latest year, 1980, the Connecticut title industry earned only 0.98 percent on total capital, while other enterprises earned 11.54 percent. (Pages 21 and 27).

It will be noted that the above rates of return for our industry are based on total rate of return, including investment earnings. If only underwriting profits and losses are considered the results are even more dismal. In the latest year, our industry sustained a net pre-tax operating loss of \$599,113. The five-year composite shows a pre-tax operating loss of \$846,471. (ADL report, pages 15 and 24).

The ADL report also shows that inflationary pressures on title industry expenses have not been offset by similar pressures on real property values. While the rate structure does incorporate an increase in policy price with increasing amount of insurance, the rate of increase in revenue is substantially less than the rate of increase in real property prices. (ADL report, pages 36-37). Furthermore, the comparative rate of return figures in the ADL report take into account income from all sources, including such additional revenues as are generated by the portion of the policy charge which increases with higher real property prices.

Enclosed as Appendix B is a statement of the projected effect of the proposed 20 percent rate increase. It will be noted that, even with the increase, the industry can expect to incur a pre-tax operating loss of \$366,397, and that, taking into account investment income, the anticipated total rate of return on total capital will be only 2.78 percent. Obviously, such projected profitability is not deemed adequate by member companies. Nevertheless, the Board does not deem it advisable at this time to impose on consumers an increase in rates greater than the proposed 20 percent.

Enclosed as Appendix C is a draft amended Rate Manual reflecting the 20 percent rate increase. Definitive copies will be filed with your Department upon the effective date of the increase.

Kindly acknowledge receipt of this filing by signing the enclosed copy of this letter.

Very truly yours,

/s/ Thomas M. Ferraro  
THOMAS M. FERRARO  
President



**[FTC COMPLAINT COUNSEL'S TRIAL EXHIBIT  
CX 41 A-E]**

**SAFECO**

Home Office  
SAFECO TITLE INSURANCE COMPANY  
13640 Roscoe Boulevard  
Panorama City, California 91409  
  
P.O. Box 2233  
Los Angeles, California 90051

INSURANCE DEPARTMENT  
STATE OF MONTANA  
REVIEWED AND FILED  
FOR INFORMATIONAL PURPOSES  
Date FEB. 22, 1983  
E. V. "SONNY" OMHOLT  
STATE AUDITOR AND  
COMMISSIONER OF INSURANCE

February 18, 1983

Mr. E. V. "Sonny" Omholt  
State Auditor and Commissioner of Insurance  
State of Montana  
Mitchell Building  
Helena, Montana 59604

Re: Amendment to Basic Title Insurance Rates

Mr. Omholt:

In compliance with Title 33, Chapter 16, Section 203 of the Montana Insurance Code, the Montana Title Insurance Service Organization hereby respectfully submits the following data, statistics and considerations used in the adoption of the title insurance rates submitted herewith, effective April 1, 1983.

Title 33, Chapter 16, Section 201 reads in part, in subsection (1) (a) rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

Subsection (b) no rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

and Subsection (c) no rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same or if such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has or if continued will have the effect of destroying competition or creating a monopoly.

This criterion is the basis of the consideration used in the establishing of the title rates herewith submitted.

In 1981 Montana produced 0.23% of the gross national title fee's in the United States. In dollars, 1981 Montana title premiums were \$4,487,000.

Montana is classified as a "File and Use" rating state. As best can be determined, the current rates used by member companies came into use in 1966 and with the exception of the addition of minor changes in the application of the rate on specific coverages, have remained unchanged sine that date.

The use of a 1966 rate in todays economy makes the profitability of the Montana title insurance industry questionable. Solvency of the title insurance industry in Montana should be a consideration of great importance.

In maintaining a 1966 level rate, it is obvious that little if any consideration has been given to the fact that nationally, the title insurance industry lost \$63.6 million in 1980, \$110.3 million in 1981 and the figures for the first half of 1982 indicates an even poorer performance with a net pre-tax operating loss exceeding that of last year. What has caused this to happen? Accumulated data has shown that the housing industry has declined 41% from its peak period of 1978 through 1981. In 1981 home sales

were at the lowest point since 1970—"baby boom" entered the market.

It has been estimated that in 1981 alone, \$180 billion in housing sales were lost because of these factors and since the start of the housing recession in 1978, this figure is more than \$300 billion.

Without exception, the year 1981 was the worst year on record for the underwriters. Although I am not privy to agent's profitability figures, I have little doubt that their results were similar. Excluding investment income, the industry lost \$110.3 million in 1981. Pre-tax operating profits declined by more than \$161 million from 1979's figure of \$51.3 million, which was the last profitable year for the title industry as 1981 was the second consecutive year in which the industry lost money. 1981 was also the fourth consecutive year in which pre-tax operating profits decreased. The title industry has had a cumulative decrease of \$218 million since 1977.

In 1972, the pre-tax operating profit of the title industry was 16.9% and actual operating revenue has increased 131%. That sounds very good until the fact that operating expenses have increased 191% in that same period. All categories of expense have increased, some much greater than others.

Personnel costs have risen by 150%, non-personnel related costs and expenses have skyrocketed by 227%; and losses and loss adjustment expenses have increased by an astounding 393%. If those percentage figures were translated into constant dollar terms, while operating revenue has increased 7%, operating costs have increased 34%, personnel costs 15% and losses and loss adjustment expense 127%.

As indicated by the above figures, inflation, particularly the past inflation in housing prices, has tended to push up title insurance revenues, even when the number of transactions is decreasing. This happens because of the rate structure of the title insurance industry; however, because

of that same rate structure, the price of a typical title insurance policy rises only at best, two thirds as fast as the price of the property insured according to Dr. Nelson Lipshutz in his article entitled "An Analysis of Inflation and Profits in the Title Insurance Industry" printed in 1980.

At the rate hearings held in November, 1982, in Austin, Texas by the Texas State Board of Insurance, testimony was presented which indicated the title insurance industry in Texas has taken drastic steps to reduce expenses. Texas coincidentally has one of the highest title insurance rates in the United States. Most, if not all, of the underwriters represented at that hearing are qualified in the State of Montana also, and have taken similar actions. The steps taken were as follows:

Action Taken	% of Companies Taking Action
1. Cut-back in personnel	85%
2. Closing of offices	62%
3. Salary freeze or pay cut	54%
4. Cut-back in travel and entertainment	54%
5. Hiring freeze	23%
6. Shortened work week	15%

On a nationwide basis, the companies reported they had reduced staff by an average of 26%, while one company reported a high of 62%, and nationally had closed 12% of their offices while one company reported closing a high of 50% of their offices.

I submit to you that the title industry in Montana has not responded to the need for a substantial increase in the basic rate as well as the various minimum rates.

I base this statement on the profitability and cost figures herein before provided, and on the following:

The present rate structure in Montana has not kept pace with the inflationary trend and the cost of production and present loss experience.



Inflationary trends, even when partially off-set by drastic expense cutting moves by management, have within the last few years when coupled with the severe decline in available business, eliminated the profitability of the title insurance industry. The title insurance industry is not only a personnel intensive industry, but is subject to a great amount of fixed costs. It is not feasible to stop maintenance of a title plant when orders are slow. The cost of utilities, postage, rent, printing and all of the other items necessary to operate are not based on our profitability. They have all gone up far in excess in proportion to the average title premium.

Historically, losses and loss adjustment expense was a low single digit percentage item for several years in the title insurance industry, remaining well below 5% of the operating dollar in 1972 and prior years. The percentage figure crept over 5% in 1973 and has increased steadily until it reached 8.8% in 1981. All presently available indicators point to an over 10% loss ratio in 1982. Underwriters pay title losses, and increasing losses, not only in frequency, but in dollar amounts which have seriously eroded the underwriter's profitability. Loss prevention measures such as audits, supervision and training also increase the underwriter's burden. A static rate which has remained unchanged since late 1966 is not responsive to the solvency of the title insurance industry.

Data has confirmed the fact that losses and loss adjustment expense in the title insurance industry have accelerated at an alarming rate. In 1981 losses and loss adjustment expense exceeded \$100 million dollars, with an actual figure of \$112,500,000. Losses and loss adjustment expense is payment in today's income dollars for errors made in the past. Experience and analysis has shown loss will arise long after the policy is issued, and even though half of the losses occur more than three years after the policy is issued, a significant loss exposure exists after 10 years.

The ability to respond to those losses that will be paid at a future date on today's policies must be based on a company's future ability; and that future ability must be based on a better solvency. Income based on a rate established in 1966, when viewed and considered with the tremendous increase in operational costs caused by the inflationary trends of our economy will not stand the test of future solvency for the title industry.

During the next year the Montana Title Insurance Service Organization will make a call for statistical data and a profitability study from all underwriters and agents in Montana. These studies will be submitted to your department and should provide an excellent overview of the condition of the title insurance industry in Montana. If it was possible we would prefer to submit that data with this filing, but the time constraints of gathering, compiling and analyzing the information received would delay this request for a much needed rate adjustment approval too far into the future. We feel confident those studies will fully support this request.

Thank you,

MONTANA TITLE INSURANCE SERVICE ORGANIZATION

/s/ R.L. Statton

ROBERT L. STATTON

Chairman of Rate Justification Committee

RLS:lm

Attachments



[FTC COMPLAINT COUNSEL'S TRIAL EXHIBIT  
CX 91 Z-50, 103]

On the Theory and Practice of Rate Review and Profit  
Measurement in Title Insurance

Irving H. Plotkin

Arthur D. Little, Inc.

\* \* \* \*

Because the number of types of policies or basic rating classifications is generally quite large,<sup>40</sup> actuarially trained rate reviewers might be tempted to try to differentiate the insurance price by the average cost differentials of these several classifications. However, a number of economic and operational facts of title insurance preclude the success of such an attempt. The smallness of the loss ratio, the high proportion of fixed costs, and the lack of any consistent relationship between variable costs and type of policy issued (or the amount of its liability) make any cost allocation mechanism extremely arbitrary. However, even if none of the just mentioned factors were true, but only the cross-subsidy discussed above was considered socially desirable, any attempt at meaningful cost differentiation by policy type would be fruitless. Price differentials in most rate schedules reflect primarily legislative and regulatory social policies, historical practice, and the realities of the product market. Because costs cannot be meaningfully accounted for by policy type, rates cannot, in other than an arbitrary fashion, be made to reflect supposed differences in production costs.

\* \* \* \*

<sup>40</sup> Anywhere from 30 to 60 basic types, frequently with many possible special endorsements and charges.

[RESPONDENTS TRIAL EXHIBIT  
RX 60 A]

Mr. Sammy D. Sapp  
October 23, 1969

I have appointed a Committee which is working on a form for distribution to all underwriters for the purpose of obtaining experience as to the operating income and expense of title underwriters and agents operating in Arizona. This Committee is headed by James C. Wickline of Chicago Title Insurance Company, Phoenix branch office. Jim and his Committee have in their possession copies of the forms prepared by your office and have been working with them to determine if they can be used in our State, with certain minor changes.

As I discussed with you on the phone our situation here is not as complicated as yours in Texas, in that we only have two classifications, underwriters and agents, and all of the agencies agreements are exclusive. There is no uniformity as to the split between the agent and the underwriter.

The problem with which the Committee has had the most trouble to date is the question of division of expenses in connection with nontitle insurance functions, such as Collection Departments, Escrow Departments and Trust Departments. The former two are closely related to the title insurance operation, however, some of the companies operate personal trust departments which are not related to title insurance.

In 1968 when we were first required to file our rates the Rating Bureau filed the rates which had been in existence since November 1966 with a few minor exceptions. The Department of Insurance, which was then in a transition period, accepted the filing without any question and without requirement of any justification thereof. To the best of our knowledge the Department has no intention, at

this time, of requiring us to file any justification of the rates, however, the work which we are currently doing is in anticipation of such a requirement in the future.

I am looking forward to meeting with you on the thirtieth. Please keep me advised as to the time of your intended arrival in Phoenix.

Very truly yours,

John B. Wilkie, President

JBW:sjh

cc: Mr. E. Gordon Smith and Mr. James C. Wickline

**[RESPONDENTS TRIAL EXHIBIT  
RX 63-63A]**

**TITLE INSURANCE RATING BUREAU OF  
ARIZONA, INC.**

November 9, 1977

The Honorable J. N. Trimble, Director  
Department of Insurance  
State of Arizona  
1601 West Jefferson  
Phoenix, Arizona 85007

Dear Mr. Trimble

Enclosed herewith is the Schedule of Escrow Rates, Manual of Classification and Rules and Plans relating thereto which comprise the filing of the Title Insurance Rating Bureau of Arizona, Inc., made pursuant to Title 20, Chapter 2, Article 4, A. R. S. § 20-341, et seq. which is proposed to be effective on November 29, 1977. This initial filing is based upon the income and expense statements and the data already collected in Arizona and previously presented to the Department of Insurance. This filing is designed to meet the mandates of A. R. S. § 20-375 which include the maintenance of stability in the title insurance industry in the state of Arizona.

The present filing, based on historical rates, continues the implicit cross-subsidization in those rates which results in lower charges to those customers who purchase low and moderate priced real estate. This initial filing of these rates also preserves, so as not to affect statistical and income studies to be prepared, general income and loss positions in the industry so that any variation in those positions is solely a product of economic and business conditions. In effect, the present filing seeks to maintain the current economic position of the industry in accordance with the statutory mandates of A. R. S. § 20-375, until more complete studies can be concluded.

The Title Insurance Rating Bureau of Arizona, Inc. has employed Arthur D. Little, Inc. to design and implement such statistical plans and studies to support subsequent filings. A copy of the letter dated October 26, 1977 from Dr. Irving H. Plotkin of Arthur D. Little, Inc. is enclosed for your records.

Very truly yours

**TITLE INSURANCE RATING BUREAU OF  
ARIZONA, INC.**

By: /s/ Owen L. Wagoner  
President

**ATTEST:**

/s/ [Illegible]  
Secretary

**ACCEPTED AND APPROVED:**

AMERICAN TITLE INSURANCE  
COMPANY

By /s/ [Illegible]

ARIZONA TITLE INSURANCE AND  
TRUST COMPANY

By /s/ [Illegible]

CHICAGO TITLE INSURANCE  
COMPANY

By /s/ [Illegible]

COMMONWEALTH LAND TITLE  
INSURANCE COMPANY

By /s/ [Illegible]

LAWYERS TITLE INSURANCE  
CORPORATION

By /s/ John B. Wilkie

PIONEER NATIONAL TITLE  
INSURANCE COMPANY

By /s/ [Illegible]

ST. PAUL TITLE INSURANCE  
CORPORATION

By /s/ [Illegible]

TITLE INSURANCE COMPANY OF  
MINNESOTA

By /s/ [Illegible]

TRANSAMERICA TITLE INSURANCE  
COMPANY

By /s/ [Illegible]

USLIFE TITLE INSURANCE  
COMPANY OF DALLAS

By /s/ [Illegible]



**[RESPONDENT'S TRIAL EXHIBIT  
RX 72]**

**STATE OF ARIZONA  
DEPARTMENT OF INSURANCE**

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**IN THE MATTER OF  
TITLE INSURANCE RATING BUREAU OF ARIZONA**

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**NOTICE OF HEARING**

The Director of Insurance of the State of Arizona requests your presence at a joint conference of representatives of the Department of Insurance, Title Insurance Companies doing business in Arizona, Agents of Title Insurance Companies doing business in Arizona and the Title Insurance Rating Bureau of Arizona to be held on May 12, 1971 at 9:30 A.M. o'clock, at the First Federal Building Auditorium, 3003 North Central Avenue, Phoenix, Arizona 85012.

Please be prepared to discuss in detail:

- (a) The basis upon which rates and fees currently charged the public by Title Insurance Companies are fixed; and
- (b) The rating material currently on file with the Department of Insurance. Applicable Law is Arizona Revised Statutes Sections 20-375, 20-376 and 20-377.

Please be prepared to discuss also the method of determining "risk premium" as defined in Arizona Revised Statutes Section 20-1562.4 both for rate making purposes and for calculation of premium taxes and/or re-

taliatory amounts under Arizona Revised Statute Section 20-1566 C.

Please be prepared further to discuss the reporting of premium receipts by Title Insurance Companies in the annual statement (Schedule T) and premium tax return filed with the Department of Insurance.

/s/ Millard Humphrey  
MILLARD HUMPHREY  
Director of Insurance

**[RESPONDENT'S TRIAL EXHIBIT  
RX 93-93 B]**

[SEAL]

STATE OF ARIZONA  
DEPARTMENT OF INSURANCE  
1601 West Jefferson  
Phoenix, Arizona 85007

November 3, 1980

Title Insurance Rating Bureau of Arizona, Inc.  
P. O. Box 16020  
Phoenix, Arizona 85011

Attention: K. D. Mattison, President

Re: Examination by the Arizona Department of Insurance

Dear Mr. Mattison:

This letter is to inform you that the Arizona Department of Insurance will be conducting an examination of the Title Insurance Rating Bureau of Arizona, Inc. (TIRBA). The scope of the examination will include:

- 1) An examination of the rate-making procedures and methodology used by TIRBA with respect to the development of title insurance and escrow rates for use in Arizona;
- 2) A determination as to whether the title insurance and escrow rates as filed by TIRBA are reasonable and not excessive, inadequate or unfairly discriminatory;
- 3) An analysis of the methodology used for measuring the profitability of title insurers and their agencies, including an analysis of the Arthur D. Little statistical plan which has been filed on behalf of TIRBA;

- 4) An evaluation of the extent to which there is competition among title insurers doing business in Arizona; and
- 5) The identification of areas in which the rate-making methodology, including any statistical plan, together with the level of competitive activity among insurers might be improved.

This examination is being conducted pursuant to Arizona Revised Statutes, Sections 20-142.C and 20-370. Pursuant to § 20-370, "The director shall, at least once in every five years, make or cause to be made an examination of each rating organization licensed in this state". Additionally, "the reasonable costs of such examination shall be paid by the rating organization . . . examined on presentation to it of a detailed account of the costs". *i.d.* Because of the extremely technical nature of this examination, including the obvious need for substantial actuarial and economic expertise in this area, I have designated the firm of Peat, Marwick, Mitchell & Company as the examiner for purposes of this task. I have also concluded that the following fees for this examination are reasonable and subject to being paid by the rating organization:

<i>Person</i>	<i>Rate Per Hour</i>
James A. Faber, F.C.A.S.	\$140
Allan M. Kaufman, F.C.A.S.	\$110
Deborah A. Ford, Ph.D.	\$71
Consultants	\$45-90

It is estimated that the examination cost will be approximately \$60,000-\$70,000. Peat, Marwick, Mitchell & Company will also be entitled to reimbursement for out-of-pocket expenses incurred for travel, subsistence, record reproduction and other like expenses. It is estimated that such expenses will approximate 25% of the estimated fees.

Peat, Marwick, Mitchell & Company will submit progress statements to the Department for payment. Payments will be made directly to Peat, Marwick, Mitchell & Company from the Arizona Insurance Examiners' Revolving Fund which will, in turn, send a statement to TIRBA for the amount paid by the Fund as examination costs. TIRBA will be expected to promptly pay such amount to the Fund upon receipt of the statement of examination costs.

Let me also add that I believe this examination is a necessary undertaking on behalf of the Department. As you may be aware, the Department has never, to the best of my knowledge, conducted an examination of the title insurance rating organization, notwithstanding the fact that ARS § 20-370 requires such an examination at least once every five years. Additionally, the Department has not, as yet, approved the statistical plan prepared and filed on behalf of TIRBA by Arthur D. Little. Hopefully, this examination will provide the Department with the necessary evaluation of this statistical plan so that the plan can be approved or modified as our needs require. I would like you to know that I seriously considered your recommendation of the Coopers & Lybrand firm for purposes of undertaking this examination. However, in my judgment, Peat, Marwick, Mitchell & Company has the necessary expertise to promptly and efficiently carry out the examination responsibility along the lines outlined herein. Regardless, I did appreciate your taking the time to recommend the Coopers & Lybrand firm for this examination.

Because I believe that this examination is of critical importance in permitting the Department to carry out its statutory rate regulatory responsibility over title insurers, I am extremely interested in completing this examination in as short a time as possible under the circumstances. Therefore, it is expected that the examination will commence on November 15, 1980, and the projected

completion date should be sometime in February of 1981. Let me thank you for your anticipated cooperation in this matter. If you have any questions concerning your responsibilities or the procedures involved in this examination, please feel free to contact me.

Sincerely,

/s/ J. Michael Low  
J. MICHAEL LOW  
Director of Insurance

JML:ph

cc: Emil Barberich  
Chief Deputy Director of Insurance  
Donald O'Dean, Chief Examiner  
Arizona Department of Insurance  
Allan M. Kaufman, Manager  
Peat, Marwick, Mitchell & Company



[RESPONDENT'S TRIAL EXHIBIT  
RX 104]

[SEAL]

STATE OF CONNECTICUT  
INSURANCE DEPARTMENT  
State Office Building  
Hartford, Connecticut 06115

April 26, 1966

Connecticut Board of Title Underwriters  
Suite 1900  
161 William Street  
New York, New York 10038

Attention: Mr. Thomas Pearson, President

Dear Mr. Pearson:

Re: Title Insurance Rate Filing

In connection with the subject in caption could you visit us on May 3 or May 4 to discuss the filing? We feel that the filing should include insurance rates only and not the fees for the cost of examination of title. We need justification for such rates as well as the breakdown of the premium dollar. How will statistics be kept for this line of insurance? Will reserves be at least equal to those required under the New York law? What states have approved similar filings and what rates became effective?

In connection with the September 2, 1965 letter from Mr. Calvocoressi we believe the submission should have been made under Section 38-190 of the General Statutes rather than 38-119.

Please send us an extra copy of the Rate Manual of Connecticut Board of Title Underwriters and let us know if either May 3 or 4 is convenient for a conference. Commissioner Cotter is available either day.

Very truly yours,  
WILLIAM R. COTTER,  
Insurance Commissioner

/s/ G. R. Livingston,  
By: G. R. LIVINGSTON,  
Casualty Actuary

GRL:ct

[RESPONDENTS TRIAL EXHIBIT  
RX 105-105 A]

CONNECTICUT BOARD OF TITLE UNDERWRITERS  
Suite 1900  
161 William Street  
New York, N.Y. 10038

April 27, 1966

Re: Urgent—Immediate Return Requested

*To All Members*

In accordance with the Connecticut Insurance Department's letter of April 26 (copy attached) Mr. Pearson, President of the Board will meet with the Connecticut Commissioner and the Connecticut Casualty Actuary on May 4th and at that time will furnish the necessary information in support of the Board's Rate Filing.

In order to prepare the necessary data and information for said filing, the Special Committee on Rate Filing will meet on Monday, May 2, 1966 to review and compile the data which I can obtain *from each member company*. Due to the shortness of the time between now and Monday, I would deeply appreciate your telephoning direct to me (212-W04-3553) as promptly as possible the information requested below and following it up with a confirmatory written letter to me in time to reach me by Monday:

1. Total amount of insurance written by your company in Connecticut for 1963, 1964 and 1965.
2. Total number of policies issued by your company in Connecticut for 1963, 1964 and 1965.
3. Total amount of losses suffered by your company in Connecticut for 1963, 1964 and 1965.
4. The number of policies concerned with said losses for said period in Connecticut.
5. If possible, the kind of losses.

Appreciating your prompt and immediate attention to the foregoing request.

Very truly yours,

Edward T. Brown  
Secretary

ETB:mt  
Enc.

116

RX 105 A

May 3, 1966

Connecticut State Insurance Dept.  
State Office Building  
Hartford, Connecticut

Attention: Mr. Brian & Mr. Livingston,  
Casualty Actuaries

Dear Sirs:

This is to confirm my telephone conference of this date advising that it will be impossible for the Board officers to meet with you tomorrow. The Committee is preparing the data requested by you and it is expected that it will be approved by the Board on May 24th for submission to your department.

In the meantime, I will be in touch with you to set another date for our conference.

Appreciating your cooperation.

Very truly yours,

---

Secretary

117

[RESPONDENT'S TRIAL EXHIBIT  
RX 106]

CONNECTICUT BOARD OF TITLE UNDERWRITERS  
Suite 1900  
161 William Street  
New York, N.Y.

June 9, 1966

Hon. William R. Cotter  
Insurance Commissioner  
Insurance Department of the State of Connecticut  
State Office Building  
Hartford, Connecticut 06115

Attention: Mr. Robert Brian,  
Casualty Actuarial Division

Dear Sir:

This is to advise that at a meeting this morning of the members of the Connecticut Board of Title Underwriters, the membership voted to withdraw the present rate and forms filing.

Accordingly, I hereby withdraw the rate and forms filing of the Connecticut Board of Title Underwriters as presently on file with the Connecticut Insurance Department. Said withdrawal is to be effective immediately.

Very truly yours,

/s/ Edward T. Brown  
Secretary



[RESPONDENT'S TRIAL EXHIBIT  
RX 107-107 A]

CONNECTICUT BOARD OF TITLE UNDERWRITERS

June 10, 1966

Hon. William R. Cotter  
Insurance Commissioner  
Insurance Department of  
State of Connecticut  
State Office Building  
Hartford, Connecticut

Attention: Mr. Robert Brian  
Casualty Actuarial Division

Dear Sir:

On behalf of the members and subscribers of the Connecticut Board of Title Underwriters I enclose herewith for filing the following documents:

1. Rate Manual of Connecticut Board of Title Underwriters dated June 10, 1966.
2. Policy Forms—"American Land Title Association—Owner's Policy Standard Form B-1962" and American Land Title Association Standard Loan Policy—Revised Coverage 1962"—which have been adopted for use in the State of Connecticut by the Connecticut Board of Title Underwriters.
3. Memorandum in Explanation and Support of Rate Manual of Connecticut Board of Title Underwriters dated June 10, 1966.

In order to facilitate the administration of the filing, the Board has adopted the following rule of application:

"This rate manual and the policy forms filed for use in connection therewith, shall be applicable to all

applications for title insurance and guaranteed searches made in the State of Connecticut on and after August 15, 1966".

It is respectfully requested that the enclosed Rate Manual and Policy Forms be approved to become effective August 15, 1966.

Respectfully submitted,

---

Secretary

ETB:mt

cc: Mr. Gilbert R. Livingston  
Casualty Actuary

[RESPONDENT'S TRIAL EXHIBIT  
RX 108]

[SEAL]

STATE OF CONNECTICUT  
INSURANCE DEPARTMENT  
State Office Building  
Hartford, Connecticut 06115

June 29, 1966

Connecticut Board of Title Underwriters  
Suite 1900  
161 William Street  
New York, New York 10038

Attention: Mr. Edward T. Brown,  
Secretary-Treasurer

Dear Mr. Brown:

Re: Rate Manual

Under the Approved Attorney Plan you state that this plan is available only through an approved attorney who is a licensed Attorney-at-Law in the State of Connecticut. In talking this filing over with our Attorney General he asked us to obtain a definition from you of "Approved Attorney". We would appreciate if if you would send us such a definition in duplicate at your earliest convenience.

Very truly yours,

WILLIAM R. COTTER,  
Insurance Commissioner

/s/ G. R. Livingston  
By: G. R. Livingston,  
Casualty Actuary

GRL:ct

[RESPONDENT'S TRIAL EXHIBIT  
RX 109-109 B]

CONNECTICUT BOARD OF  
TITLE UNDERWRITERS  
Suite 1900  
161 William Street  
New York, N.Y. 10038

212 WO 4-8883

June 30, 1966

Hon. William R. Cotter  
Commissioner of Insurance  
State of Connecticut  
State Office Building  
Hartford, Connecticut

Attention: Mr. Livingston

Gentlemen:

We are informed by Mr. Livingston that the Attorney General wishes to have further information on the Approved Attorney Plan which is included in our recent filing of General Rules, Rates and Definitions.

For many years, title insurance companies have used the Approved Attorney Plan, in most of the fifty states, as an accepted means of doing business. Under such a plan, the insurer is furnished with an opinion (certification) of title by a law firm, or an attorney admitted to practice law in the state where the property is located. The insurer will issue a commitment to insure, or a title insurance policy, based upon the facts contained in the attorney's opinion of title. The attorney's opinion may be set up in letter form, but frequently it is rendered on a form prepared by the insurer and furnished to the attorney for this purpose.

Since there are elements of risk and responsibility involved in insuring titles which are searched and examined by approved attorneys, title insurance companies, as a matter of good business judgment, must be selective in their choice and use of real estate counsel. For this reason, title insurance companies have specific procedures for approving law firms, or attorneys, with whom they expect to do business.

The appointment of Approved Attorneys (sometimes also referred to as approved examining counsel) requires a careful evaluation of their ability to properly search, examine and certify title to real property. So that liability will be assumed by the insurer based only upon satisfactory and sufficient title evidence, certain criteria and procedures are followed by most insurers. A sample of one member company's procedure is as follows:

1. The law firm, or attorney applicant, will complete company form No. 70A (Application for Approved Attorney List) attached. The application form contains considerable biographical data on the applicant, as well as information on the applicant's experience in the field of real estate law.

2. Frequently, checks are made with institutional lenders and other attorneys in the applicant's area, as to his general standing in the business community.

3. Professional directories are sometimes consulted for additional data.

4. A personal interview in the applicant's office is usually made by a company employee, or agent.

If the insurer is satisfied with the applicant's qualifications, an appointment letter is forwarded (see sample form attached). Along with the appointment letter, the company usually sends a list of instructions and procedures to be followed by the approved attorney (copy attached). Upon acceptance of the appointment, the insurer will furnish additional forms to be used by the approved attorney in certifying titles in connection with

the insurer's applications for owners, leasehold and for mortgage insurance.

The Approved Attorney Plan is open to all qualified Connecticut attorneys and, in fact, the member companies of the Connecticut Board of Title Underwriters would welcome applications from qualified Connecticut attorneys to become approved examining counsel in Connecticut in accordance with the Approved Attorney Plan.

In accordance with your request a copy of this letter and the forms mentioned therein are enclosed for the convenience of the Attorney General.

Very truly yours,

/s/ Edward T. Brown  
Secretary



[RESPONDENT'S TRIAL EXHIBIT  
RX 110]

[SEAL]

STATE OF CONNECTICUT  
INSURANCE DEPARTMENT  
State Office Building  
Hartford, Connecticut 06115

July 6, 1966

Connecticut Board of Title Underwriters  
Suite 1900  
161 William Street  
New York, New York 10038

Attention: Mr. Edward T. Brown,  
Secretary-Treasurer

Dear Mr. Brown:

Re: Title Insurance

This will acknowledge receipt of your letters of June 9, June 10, June 21 and June 30, 1966. The filing as submitted on June 10 and amended June 21 is approved for use in Connecticut effective August 15, 1966. The two policy forms attached to the June 10 letter have been filed. The approval of the filing is made without prejudice as to any questions that may arise at a later date in connection with the state premium tax.

Very truly yours,

/s/ William R. Cotter  
Commissioner

WRC:ct

[RESPONDENT'S TRIAL EXHIBIT  
RX 114-114 A]

CABELL, KENNEDY & FRENCH  
5 Landmark Square  
Suite 200  
Stamford, CT 06901

Telephone (203) 964-0180

October 12, 1983

Connecticut Board of Title Underwriters  
Principal Representatives  
(Messrs. Lasseter, Bannon, Ciarleglio, DeToro,  
Holden, Keegan, Norton, Pearson, Sheehy,  
Statton and Steen)

Re: *CBTU Rating Plan*

Gentlemen:

On Friday, October 7, 1983, Dave Lasseter, Burt Steen and I met with Waldo R. DiSanto, Director, Property & Casualty Division, Connecticut Insurance Department. Mr. DiSanto said that he had not seen the new Rate Manual filed by CBTU letter dated September 30, 1983. However, after a lengthy discussion in which the provisions of the new manual, including the changes from the former manual, were explained to him, Mr. DiSanto said that he has no problem with the filing.

Accordingly, it appears that the new Rate Manual can be put into effect on October 15, 1983 as scheduled.

During the course of our discussion, Mr. DiSanto said that the Insurance Department considers the amount of commissions being paid to certain title insurance agents to be excessive. He indicated that the Department may seek to limit the amount of commissions that can be paid to agents. At first he suggested that this might be done by limiting the commission expense factor in the

overall rates. However, he subsequently agreed that this would not be effective. As an alternative, he proposed to consider a regulation that would proscribe payment of commissions over a certain percentage of the applicable rate charge. He indicated that the Department might schedule a hearing and call industry witnesses prior to proceeding with such a regulation.

Mr. DiSanto said that the meeting was helpful to his understanding of the CBTU rating plan and expressed his appreciation for our visit to his office.

Very truly yours,

/s/ T. Richard Kennedy  
T. RICHARD KENNEDY

TRK/dbf

cc: (Messrs. Anderson, Bennison, Byrne,  
Harvey, McMackin, Wilson and  
Winkler)

[RESPONDENT'S TRIAL EXHIBIT  
RX 115]

CONNECTICUT BOARD OF  
TITLE UNDERWRITERS  
5 Landmark Square, Suite 200  
Stamford, CT 06901  
(203) 964-0180

October 12, 1983

Waldo R. DiSanto, Director  
Property & Casualty Division  
State of Connecticut  
Insurance Department  
165 Capitol Avenue  
Hartford, Connecticut 06106

Dear Mr. DiSanto:

Thank you for taking time from your busy schedule to meet with us last Friday. We very much appreciate your interest in our efforts to provide a fair and equitable rating plan for the business of title insurance in Connecticut.

On the basis of our discussion, we understand that your Department has no objection to the implementation of the new CBTU Rate Manual filed with our letter of September 30, 1983. Accordingly, our member companies have been advised that the new Manual can be put into effect on October 15, 1983 as scheduled.

Please do not hesitate to call us at any time with respect to any questions that you may have.

Very truly yours,

H. DAVID LASSETER

HDL/dbf

**[RESPONDENT'S TRIAL EXHIBIT  
RX 116]**

CONNECTICUT BOARD OF  
TITLE UNDERWRITERS  
5 Landmark Square, Suite 200  
Stamford, Ct. 06901  
(203) 964-0180

September 30, 1983

The Honorable	[Stamp:
Peter W. Gillies	Recorded Effective 10/15/83
Commissioner of Insurance	Connecticut Insurance
State of Connecticut	Department
Insurance Department	By: [Illegible]
State Office Building	Examiner [Illegible]
Hartford, Connecticut 06115	Division]

Re: Connecticut Board of Title Underwriters Rate Manual

Dear Sir:

Enclosed is a copy of a new CBTU Rate Manual which is proposed to become effective October 15, 1983. Enclosed also is a memorandum describing the principal changes from the present Rate Manual.

As indicated by the memorandum, the new Rate Manual is the result of a two-year study by the CBTU. It is intended to clarify certain rating provisions and to delete certain provisions no longer considered necessary or desirable. Except for minor adjustments which are noted in the memorandum, the new Rate Manual does not change the rate levels currently filed by the CBTU with your Department.

We appreciate your attention to this matter and would be pleased to answer any questions that you may have.

Very truly yours,

/s/ H. David Lasseter pfe  
H. DAVID LASSETER  
President

HDL:aa  
Enclosures

**[RESPONDENT'S TRIAL EXHIBIT  
RX 295]**

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

October 28, 1968

Richard P. Buellesbach, Esq.  
Whyte, Hirschboeck, Minahan, Harding  
& Harland  
2100 Marine Plaza  
Milwaukee, Wisconsin 53202

Dear Mr. Buellesbach:

Re: Title Insurance Rating Bureau

We have reviewed the revised Articles of Association which you forwarded to us with your letter of October 23, 1968.

The provisions in these revised articles appear to comply fully with all current requirements of law, and otherwise appear to be proper in all material respects. From the standpoint of approval by this office, the adoption of the revised articles referred to above by the Title Insurance Rating Bureau would be acceptable.

Very truly yours,

/s/ G. L. Miller  
G. L. MILLER  
Assistant Deputy Commissioner

GLM:sf



[RESPONDENT'S TRIAL EXHIBIT  
RX 302]

## MEMORANDUM

CHICAGO TITLE INSURANCE COMPANY  
TITLE GUARANTY COMPANY OF WISCONSIN DIVISION  
734 North Fourth Street  
Milwaukee  
Broadway 1-5113

August 17, 1970

To: Officers, Principal Delegates and Alternate Delegates of Wisconsin Title Insurance Rate Service Organization

From: Leonard C. Donohoe, Jr.

Subject: Proposed rate filing. Progress report.

- Mr. Kennedy indicated that the Department would carefully review our filing when formally made and either accept it or informally convey their observations and comments back to us for further consideration.
- Mr. Kennedy suggested that we develop a statistical plan or experience table to justify future rate filings. I would welcome comments or suggestions from any of you on a possible approach to this.

It has been noted that the proposed filing does not make provision for junior mortgage policies nor for insurance of additional advances under open end mortgages. I will ask Bob McMackin to give me his recommendation for these additions.

Capitol Land Title Insurance, Inc. is no longer in the direct writing title insurance business and has resigned from the Organization.

Again, as soon as I receive forms for filing from all members, together with authorizations to the Organiza-

tion from the members to file forms and rates in their behalf and as soon as I have Bob's suggestion on junior mortgage policies and additional advances, I will proceed to make the necessary filings. May I hear from all principal delegates as soon as possible.

LCD:mj  
Encl.

**[RESPONDENT'S TRIAL EXHIBIT  
RX 303]**

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

April 27, 1971

Wisconsin Title Insurance Rate  
Service Organization  
734 North Fourth Street  
Milwaukee, Wisconsin 53203

Attention: Mr. Leonard C. Donohoe, Jr., President

Gentlemen:

Title Insurance Rates  
Your letter of April 14

The rate filings effective June 1, 1971, are acceptable.

In future filings, rate filings should be submitted within 30 days after they become effective, to comply with the current rate law.

As respects the rate filing, please explain why the search and examination charges are filed to be part of the cost of insurance only in the southeastern counties of Wisconsin consisting of Kenosha, Milwaukee, Ozaukee, Racine, Walworth, Washington, and Waukesha. It is our understanding that the policy forms and endorsements are uniformly applicable to all counties and, if so, why should not the appropriate search and examination charges be established for all counties—adjusted, if necessary, to reflect the difference in expense factor in the several counties? We would appreciate an explanation for our records.

Very truly yours,

/s/ J. Ed. Kennedy  
J. ED. KENNEDY  
Actuary

JEK:ecm  
Enc. duplicate submission

[RESPONDENT'S TRIAL EXHIBIT  
RX 305]

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

June 5, 1973

Mr. Robert J. Mithcell, Vice President  
Commonwealth Land Title Insurance Company  
135 West Wells Street  
Milwaukee, Wisconsin 53203

Dear Mr. Mitchell:

Your letter of June 4, 1973

Enclosed you will find a current copy of the document entitled Instructions for Licensing Insurance Agents. Since I am the person charged with handling title insurance filings in Wisconsin, I suggest that you name two dates in the next month which you could be in Madison. Upon receipt of this information, I will then tell you which of these dates would be better for me. If there are other members of the department who you would like to have at this meeting to discuss the overall relationship of the title industry and the commissioners office, please let me know.

Sincerely,

/s/ Norman J. Wirtz  
NORMAN J. WIRTZ  
Insurance Rate and Form Analyst

NJW:iep  
Enc.

[RESPONDENT'S TRIAL EXHIBIT  
RX 307]

July 12, 1973

Mr. Norman J. Wirtz  
Insurance Rate and Form Analyst  
Office of the Commissioner of Insurance  
State of Wisconsin  
201 East Washington Street  
Madison, Wisconsin 53702

Dear Sir:

Thank you for your quick reply to my letter on June 4, 1973. I also wish to thank you for the information forwarded at the same time.

In response to your suggestion that I name two dates in July when I could be in Madison, my preference would be either Wednesday, July 11 or Thursday, July 12. However, the 18th or the 19th and the 25th and the 26th are at this time also open.

Perhaps the best way to determine what other people, if any, should be in attendance can be determined by somebody by what some of the things that I would like to cover.

First, I would like to review the current filings. I would also like to go over procedures for the filing of deviations.

Another point is licensing requirements. Thirdly, the general areas covered by communications between the Office of the Commissioner and the Rate Service Organization. I am interested in your interpretation of our function, and also what you expect of us. I would like to find out how regularly, if at all, you want reports from us concerning various matters.

Very truly yours,

Robert J. Mitchell  
Vice President

RJM:MBK



[RESPONDENTS TRIAL EXHIBIT  
RX 308]

WISCONSIN TITLE INSURANCE  
RATE SERVICE ORGANIZATION

2100 Marine Plaza  
Milwaukee, Wisconsin 53202

January 18, 1974

Officers, Principal Delegates and Alternate Delegates  
of Wisconsin Title Insurance Rating Bureau

The time has come to call a meeting of the Wisconsin  
Title Insurance Rate Service Organization.

The Insurance Commissioner of the State of Wisconsin  
has asked me how we justify our rates. I think this  
should be the main subject for our meeting, and because  
this may require that several of our delegates get further  
advise from their home offices, the meeting date has been  
left open pending your advice. My preference would be  
the week commencing March 25, or one of the first two  
weeks in April. I would appreciate a reply as soon as  
possible so that the proper arrangements can be made.

Consideration should also be given to methods to carry  
out some of the purposes in our articles of incorporation  
which have been neglected at our previous meetings.  
These would include:

Paragraph 2:

To acquire, publish and distribute information pertaining  
to the business of title insurance and of interest generally  
to the members of the Organization and to the public at  
large.

Paragraph 3:

To approve policy forms and other documents pertaining  
to title insurance and to establish on an equitable and  
impartial basis underwriting rules and classifications of

risks and rates, all in accordance with the insurance laws  
of the State of Wisconsin.

Paragraph 6:

To further the interests of the business of title insurance  
generally and to do such other and related acts and things,  
including the making and performing of any contracts  
which are necessary or appropriate to accomplish the pur-  
poses herein set forth.

Your response to this is also solicited.

RJM:MBK

[RESPONDENT'S TRIAL EXHIBIT  
RX 311]

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

April 30, 1974

Mr. Robert J. Mitchell, Vice President  
Commonwealth Land Title Insurance Company  
135 East Wells Street  
Milwaukee, Wisconsin 53203

Dear Mr. Mitchell:

Thank you for your letter of April 23 concerning your recent title insurance meeting. Although the Wisconsin Title Insurance Rate Service Organization has not resolved many of the questions of concern to this office, it appears that your organization is now making some progress in these areas. Please keep us advised as to future developments.

As to the penultimate paragraph of your letter, I have referred a copy of your letter to our examining division. They will be able to furnish you with financial statistics as reported to your office for 1973 for all title insurance companies. When they have had an opportunity to compile the data requested, they will forward it to you directly.

Very truly yours,

/s/ Louis N. Hannes  
LOUIS N. HANNES, Chief  
Property-Casualty Rates Division

LNH:iep

{

[RESPONDENT'S TRIAL EXHIBIT  
RX 316]

[SEAL]

OFFICE OF THE COMMISSIONER OF INSURANCE  
STATE OF WISCONSIN

July 18, 1974

Mr. Robert J. Mitchell, President  
Wisconsin Title Insurance Rate Service Organization  
c/o Commonwealth Land Title Insurance Company  
135 West Wells Street  
Milwaukee, Wisconsin 53203

Dear Mr. Mitchell:

Title Insurance—Rate Justification

Please consider this letter as a formal request from this office for your organization to compile the statistical information discussed in our July 12 meeting. We also request that all member companies of your rate service organization participate in the compilation of the requested statistical data.

Very truly yours,

/s/ Louis N. Hannes  
LOUIS N. HANNES, Chief  
Property-Casualty Rates Division

LNH:iep

**[RESPONDENTS TRIAL EXHIBIT  
RX 317-317 A]**

**WISCONSIN TITLE INSURANCE  
RATE SERVICE ORGANIZATION  
2100 Marine Plaza  
Milwaukee, Wisconsin 53202**

**MINUTES OF THE MEETING OF  
September 11, 1974**

The meeting of the Wisconsin Title Insurance Rate Service Organization was held on September 11, 1974 at the Pioneer Inn, Oshkosh, Wisconsin. The following representatives were present:

American Title Ins. Co.	Alan Dolenshek
Chicago Title Ins. Co.	Ronald L. Otto George Hursig, Jr. Leonard C. Donohoe
Lawyers Title Ins. Co.	Richard F. Cimpl Richard Stopczynski James Reynolds Gerald Klein
Pioneer National Title Ins. Co.	Don Walters Philip M. Larkin Richard Tyson
St. Paul Title Ins. Co.	Melvin A. Bois Nic Hoyer
Title Ins. Co. of Minn.	Michael Pollack
The following company was absent:	Stewart—Title Guaranty

The meeting was called to order by President Mitchell at 1:15 P.M. Each member having previously read the minutes from the previous meeting, a motion was made and carried to dispense with reading said minutes.

George Hursig, Jr. was called on to bring the organization to date concerning the rate justification committee's work. First he reported that Louis N. Hannes of the Commissioner's office had approved the form that his subcommittee had recommended. He had but one reservation, and that was the separating of the risk from the search and examination. However, he said for now he was satisfied.

The rating organization, at the Commissioner's request, is to supply five years history with April 15, 1975 being the target date for the first report.

The next step to be taken was to find a party that could take the submissions by the individual companies and compile them into one report for the Commissioner. The President was requested to approach our counsel and ask if someone in his firm could have this done for us. A reply was to be made to George Hursig, Jr.

A motion was then made and seconded to accept the rate justification subcommittee's report form. There was some opposition to this, and the membership was polled. The results are as follows:

American Title Ins. Co.	.....abstained
Chicago Title Ins. Co.	.....for acceptance
Commonwealth Land Title Ins. Co.	...for acceptance
Lawyers Title Ins. Co.	.....for acceptance
Pioneer Nat'l Title Ins. Co.	.....for acceptance
St. Paul Title Ins. Co.	.....for acceptance
Title Ins. Co. of Minn.	.....abstained.
Motion carried.	

Discussion was then held on the hiring of Dr. Irving Plotkin of the Arthur D. Little, Inc. to discuss with Commissioner DuRose with the hope of changing his opinions relative to his position that net profit on gross revenue



was a proper basis for determination for rate justification. The following motion was then introduced and seconded:

"Resolved, That Wisconsin Title Insurance Rate Service Organization retain Dr. Irving H. Plotkin, of Arthur D. Little, Inc. to counsel with the Wisconsin Commissioner of Insurance on a reasonable rate of return on revenue for the title insurance industry; That such retention be within budgetary limits of \$5,000.00 pending further authorization."

Motion approved by unanimous vote.

George Hursig, Jr. volunteered to approach Dr. Plotkin on behalf of the organization.

[RESPONDENT'S TRIAL EXHIBIT  
RX 323-323 A]

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

March 3, 1975

Senator Ernest Keppler  
Room 316 South  
State Capitol  
Madison, Wisconsin 53702

Dear Senator Keppler:

The public hearing referred to in Joseph G. Altschaeff's letter to you was to consider adoption of Administrative Rules Ins 3.32 Title Insurance—Prohibited Practices and Ins 3.33 Title Insurance Rates. I am sending you a copy of pages from the January, 1975 Wisconsin Administrative Register which include the Notice of Hearing and the text of the proposed rules. I assume that Mr. Altschaeff already has copies of these proposals.

The hearings were well attended by abstractors, attorneys and representatives of title insurers. I note from the hearing appearance list that Mr. Altschaeff was able to attend the hearing.

Separate records were made of the hearing concerning the two proposed rules. I am enclosing a copy of a statement concerning proposed Ins 3.32 which was made a part of the record of the hearing and which summarizes the purpose of the rule. Those in attendance seemed to be in agreement with the general purpose of the proposal, but had several suggestions and criticisms of the particular provisions. The record of the hearing was left open for 20 days for submission of additional comments and suggestions.

The hearing on proposed Ins 3.33 Title Insurance Rates was for the purpose of instituting a delayed effective date

for title insurance rates, requiring the prior approval of such rates and specifying the supporting data which was to be included as part of a rate filing. Exhibits were introduced at the hearing which show that most of the title insurers doing business in Wisconsin are members of the Wisconsin Title Insurance Rate Service Organization and that substantially all of the title insurance in Wisconsin is written at the same premium rate. These exhibits appear to show that there is no price competition at the level of the consumer and that competition is not an effective regulator of rates such as contemplated in sections 625.11 and 625.21, Wis. Stats. In such cases a rule may be promulgated requiring prior approval of rates.

A representative of the Wisconsin Title Insurance Rate Service Organization at the hearing agreed to the instituting of prior approval for title insurance rates, but he, the representative of the Wisconsin Land Title Association and others, objected to the limitation on premium charges set out in subsections (6) and (7) of the proposed rule. The hearing was recessed until April 17, 1975 so that information could be furnished to establish levels of premium rates which meet the requirements of Chapter 625, Wisconsin Statutes. The Wisconsin Title Insurance Rate Service Organization and the Wisconsin Land Title Association have agreed to prepare data for this purpose, but I will welcome information from any source.

Very truly yours,

/s/ S. C. DuRose  
S. C. DuROSE  
Commissioner of Insurance

SCD:imk

Enc.

cc: Mr. Joseph G. Altschaeff  
Port Abstract & Title Co., Inc.  
125 West Grand Avenue  
Port Washington, Wisconsin 53074

[RESPONDENT'S TRIAL EXHIBIT  
RX 329-329 A]

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

October 27, 1975

Mr. Leonard C. Donohoe, Vice President and Manager  
Chairman—Subcommittee of Wisconsin Title  
Insurance Rate Service Organization  
c/o Wisconsin Division  
Chicago Title Insurance Company  
734 North Fourth Street  
Milwaukee, Wisconsin 53203

Dear Mr. Donohoe:

Thank you for the suggestions concerning Wisconsin Administrative Code section Ins 3.32 Title Insurance—Prohibited Practices presented with your letter of September 24, 1975 and earlier.

The suggestion in your September 24 letter that Ins 3.32 (3) (d) be changed to only include "customary" search and examination charges in the definition of title insurance rates was rejected because all search and examination charges, customary or not, should be a part of the title insurance rate. However, it is recognized that not all situations can be described or provided for specifically in a rate manual so that the prohibited practices part of the rule has been changed to permit an insurer to file material with this office which would include enough information so that the amount of all search and examination charges could be determined. Any excessive or inappropriate charges could be disapproved. This was accomplished by changing paragraphs (a) and (b) in subsection (4) so that they will read:

- (a) Charging an amount for a title insurance policy or commitment for a title insurance policy other than the amount developed by application of the appropriate title insurance rate developed from the rates and supplementary rate information on file with the commissioner for use by the title insurer.
- (b) Waiving, or offering to waive, all or any part of the applicable title insurance rate or premium developed by proper application of the appropriate title insurance rate developed from the rates and supplementary rate information on file with the commissioner.

A reference to the definition of supplementary rate information included in section 625.02 (1), Wis. Stats., was added to the definitions section of the rule as paragraph (e).

The reference to "rates and supplementary rate information" in the rule will be consistent with the reference in section 625.13, Wis. Stats., which requires the filing of rates. Supplementary rate information for title insurance is defined broadly enough to include schedules to include the unusual rating situation similar to the experience rating and schedule rating filings which have been developed for other lines to meet the requirements of section 625.02, Wis. Stats.

Commissioner Wilde plans to proceed with the adoption of this rule in order to have it effective as soon as possible.

Very truly yours,

/s/ M. E. Van Cleave  
M. E. VAN CLEAVE  
Assistant Deputy Commissioner

MEV:imk

[RESPONDENT'S TRIAL EXHIBIT  
RX 335]

STATE OF WISCONSIN  
CORRESPONDENCE/MEMORANDUM

Date: August 20, 1976  
To: Harold R. Wilde, Commissioner of Insurance  
From: Norman J. Wirtz, Insurance Rate and Form Analyst  
Subject: Title Insurance Study

File Ref: [Handwritten notes:  
"Many thanks  
H 8/22  
(Please Keep a file)"]

Some time ago, you requested comments on the study by Hofflander and Shulman on "The Distribution of Title Insurance in California—Analysis of a Potential Problem".

This study speaks to the growing problem in California of real estate brokers forming controlled underwritten title companies. The potential for conflict of interest in these arrangements are obvious. In the real estate settlement process, the producer controls or has the potential to control the placement of title insurance. Because the underwritten title company searches the title and actually issues the policy for its underwriting title insurer, the title insurer is at the mercy of the UTC on the other end of the transaction. The controlled UTC can choose the insurance company which will be its underwriter. A major factor in this decision is the amount that the controlled UTC will receive as compensation for the handling of the insurance transaction for this insurer. Competition among title insurers could drive up the price each title insurer is willing to pay the UTC for his busi-



ness. The broker then has power or leverage to deny competitors free access to the market.

In Wisconsin, the title insurance operation is conducted through company branch offices or title plans owned by title insurance agents. We know of no active real estate broker who also owns a title insurance plant. Generally, these plants in the Milwaukee area write for just one title company. This has historical reasons because many of these plants spun off from the company by means of purchase by agents over the years. In other areas, the agents do write for more than one title company but the volume of business is in the Milwaukee area. This leads me to conclude that the structure of the business is quite different than California.

In connection with this, I thought it would be useful to update the exhibit submitted by Dr. Plotkin at the title rate hearing over a year ago to include the results of 1975. This gives a rough measure of the industry rate of return on capital and on net worth. The title industry appears to be following the depressed earnings cycle of the property liability business fairly closely. It is suggested that we take another look at this when the 76 results are in to see if there has been any improvement in the earnings of this industry. It is interesting to note that the title industry in Wisconsin did out perform the industry on a countrywide basis by showing a [illegible] ratio of only 2.5% for Wisconsin vs. a [illegible] ratio of 5.4% countrywide.

**[RESPONDENTS TRIAL EXHIBIT  
RX 337]**

**WISCONSIN TITLE INSURANCE  
RATE SERVICE ORGANIZATION**  
2100 Marine Plaza  
Milwaukee, Wisconsin 53202

October 1, 1976

Officers, Principal Delegates and  
Alternate Delegates of Wisconsin  
Title Insurance Rating Service

On September 30, 1976 Lou Hannes of the Commissioner's office called and said that they had approved the statistical system and the income and expense plan conditionally, subject to changes they may want to make later. The only change they would like to see at this time is a reconciliation between the national data as called for in the income and expense plan and the statutory data supplied annually by the companies on the NAIC blank pertaining to non-admitted assets.

Mr. Hannes also informed me that an advisory committee to the commissioner has suggested a new list of definitions for the various lines of insurance in which title is defined as follows: "Title—to insure against loss by reason of defects in title to property." As of this date the definitions have not been approved by the commissioner.

By a letter of this date I am informing Nelson Lipshutz of Arthur D. Little of the commissioner's response. I am also requesting that further consideration of this matter be taken up with Dick Buellbach.

/s/ [Illegible]

[RESPONDENT'S TRIAL EXHIBIT  
RX 341]

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

January 18, 1977

Wisconsin Title Insurance Rate Service Organization  
2100 Marine Plaza  
Milwaukee, WI 53202

Attention: Mr. Richard P. Buellbach, Secretary

Gentlemen:

This will acknowledge the filing of your Statistical System and your Income and Expense Plan, each dated August 25, 1976, and each prepared by Arthur D. Little, Inc.

We have reviewed this filing, which we understand was implemented on January 1, 1977, and find that it is acceptable subject to such future action as may be deemed necessary by this office. Our acceptance of this filing is also subject to your organization making every effort to obtain complete cooperation from title insurers and their agents. This cooperation is necessary if we are to get complete information and the statistical data outlined in your proposed filing.

It should also be noted that this office may at some point in the future adopt an administrative rule pertaining to a statistical plan for title insurance as well as an income and expense plan similar to that contained in your filing. However, for the present, we do not believe the

rule is necessary if the title insurance companies and agents voluntarily comply with the programs filed by your organization.

Very truly yours,

/s/ L.N. Hannes  
LOUIS N. HANNES, Director  
Property-Casualty Rates Bureau

LNH:iep

[RESPONDENT'S TRIAL EXHIBIT  
RX 367]

[SEAL]

STATE OF WISCONSIN  
OFFICE OF THE COMMISSIONER OF INSURANCE

April 8, 1981

Mr. Donald E. Grabski, President  
Wisconsin Title Insurance Rate Service Organization  
2100 Marine Plaza  
Milwaukee, WI 53202

Dear Mr. Grabski:

The recent rate revision filed by your organization is in the process of being reviewed. It appears to contain substantial rate increases and there may be a need to request further documentation regarding the rate change. Please advise this office which of the members of your organization have adopted the rate revision.

Sincerely,

/s/ John F. Keegan  
JOHN F. KEEGAN, Director  
Rates and Forms Bureau

JFK/gjh

April 10, 1981

Original letter delivered to  
Don Grabski today  
dh

April 13, 1981—copy  
mailed to Len Donohue.  
[Initialed]

[RESPONDENT'S TRIAL EXHIBIT  
RX 369-369 A]

CHICAGO TITLE INSURANCE COMPANY  
734 North Fourth Street  
Milwaukee, Wisconsin 53203  
(414) 271-5113

June 1, 1981

Mr. John F. Keegan  
Director  
Bureau of Rates and Forms  
Office of the Commissioner of Insurance  
201 East Washington Avenue  
Madison, Wisconsin 53703

Re: Wisconsin Title Insurance Rate  
Service Organization

Dear Mr. Keegan:

The following are submitted as agreed upon at our meeting on May 11, 1981:

1. 1976 Wisconsin Title Insurance Rate Service Organization Financial Reporting Plan
2. 1976 Wisconsin Title Insurance Rate Service Organization Statistical System
3. Letter of August 25, 1976 from Nelson R. Lipschutz, Consultant, Regulation and Economics, of Arthur D. Little, Inc. to Mr. Louis N. Hannes, Chief Property-Casualty Rate Division, submitting the foregoing plans.
4. Letter of January 18, 1977 from Mr. Hannes to Richard P. Buellesbach, Secretary, Wisconsin Title Insurance Rate Service Organization acknowledging the filing of the foregoing plans.



5. Letter of August 24, 1978 from C. Ray Winder to Harold R. Wilde, Jr., Commissioner of Insurance, submitting expanded versions of the 1978 plans.
6. 1978 Statistical Plan
7. 1978 Financial Reporting Plan
8. Letter of August 11, 1978 from Michael F. Koehn of Arthur D. Little, Inc. to Richard P. Buellbach, Secretary of WTIRSO commenting on the 1978 changes to the statistical and financial reporting plans.

I believe this is all of the data that I offered to furnish. Messrs. Hursig and Grabski will forward the further data submissions that we discussed.

Thank you for meeting with us. If I can provide any further information, please let me know.

Very truly yours,

LEONARD C. DONOHUE  
Vice President and Manager  
North Central Region

Enclosures

cc: Mr. Donald E. Grabski  
Mr. George E. Hursig  
Mr. Norman J. Wirtz, Insurance Rate &  
Forms Analyst  
Mr. Marvin E. Van Cleave,  
Insurance Administrator

**[RESPONDENT'S TRIAL EXHIBIT  
RX 370-370 A, C-E, U, V]**

**ECONOMIC ANALYSIS OF THE  
WISCONSIN TITLE INSURANCE INDUSTRY  
1972-1980**

*report to*

**OFFICE OF THE COMMISSIONER OF INSURANCE  
STATE OF WISCONSIN  
AND  
WISCONSIN TITLE INSURANCE RATE  
SERVICE ORGANIZATION**

**JULY 1981**

**Arthur D. Little, Inc.**

RX 370A

Arthur D. Little, Inc.  
Acorn Park  
Cambridge, MA 02140  
(617) 864-5770  
TELEX 921436

July 13, 1981

The Honorable Susan M. Mitchell  
Commissioner of Insurance  
Wisconsin Insurance Department  
123 W. Washington Avenue  
Madison, Wisconsin 53702

Dear Commissioner Mitchell:

Pursuant to our ongoing agreement with the Wisconsin Insurance Department and the Wisconsin Title Insurance Rate Service Organization, we are pleased to submit herewith the results of our analysis of the financial and statistical data on 1980 operations collected by the member companies of the Rate Service Organization. These data were collected through the regulatory data reporting system (the Wisconsin Title Insurance Rate Service Organization Financial and Statistical Reporting Plans) requested and approved by the Department.

In this report we incorporate our analysis of the 1980 financial and statistical data with the economic analysis presented in previous reports to the Department. The additional results presented here fully confirm our earlier conclusions that the data collection system is functioning properly.

Respectfully yours,

/s/ Lilli A. Gordon  
LILLI A. GORDON  
Economist  
Regulation & Economics

/s/ Irving H. Plotkin  
IRVING H. PLOTKIN  
Vice President & Director  
Regulation & Economics

pjv

RX 370C

## TABLE OF CONTENTS

	Page
List of Tables .....	iv
List of Figures .....	vi
I. INTRODUCTION .....	1
II. UNDERLYING DATA .....	2
III. THE HISTORICAL PROFITABILITY OF THE WISCONSIN TITLE INSURANCE INDUS- TRY .....	3
IV. LOSS EXPERIENCE OF THE WISCONSIN TITLE INSURANCE INDUSTRY, 1972-1980..	17
V. THE HISTORICAL LEVEL OF SMALL CON- SUMER SUBSIDY FOR THE WISCONSIN TITLE INSURANCE INDUSTRY .....	21
APPENDIX A—COMPANIES PROVIDING DATA..	32
APPENDIX B—STATISTICAL TRANSACTION CODES .....	34

## RX 370D

## LIST OF TABLES

Table No.		Page
1	Income Statement of the Wisconsin Title Insurance Industry, Wisconsin Operations, 1972-1980..	5
2	Income Statement of the Wisconsin Title Insurance Industry, Other States' Operations, 1972-1980 .....	6
3	Income Statement of the Wisconsin Title Insurance Industry, Total Operations, 1972-1980 .....	7
4	Balance Sheet of the Wisconsin Title Insurance Industry, Wisconsin Operations, 1972-1980 .....	8
5	Balance Sheet of the Wisconsin Title Insurance Industry, Other States' Operations, 1972-1980....	9
6	Balance Sheet of the Wisconsin Title Insurance Industry, Total Operations, 1972-1980 .....	10
7	After-Tax Rates of Return on Total Capital of the Wisconsin Title Insurance Industry, Wisconsin Operations, 1972-1980 .....	11
8	After-Tax Rates of Return on Total Capital of the Wisconsin Title Insurance Industry, Other States' Operations, 1972-1980 .....	12
9	After-Tax Rates of Return on Total Capital of the Wisconsin Title Insurance Industry, Total Operations, 1972-1980 .....	13
10	Annual After-Tax Rates of Return on Total Capital, FTC/SEC Companies, 1968-1980 .....	14
11	Loss Experience of the Wisconsin Title Insurance Industry, Wisconsin Operations, 1972-1980 .....	18
12	Loss Experience of the Wisconsin Title Insurance Industry, Other States' Operations, 1972-1980....	19
13	Loss Experience of the Wisconsin Title Insurance Industry, Total Operations, 1972-1980 .....	20
14	Wisconsin Title Insurance Statistical Report, Transaction Report, 1980 .....	22

## RX 370E

## LIST OF TABLES (Continued)

Table No.		Page
15	Profit Structure of Title Operations for the Wisconsin Title Insurance Industry, Wisconsin Operations, 1977 .....	23
16	Profit Structure of Title Operations for the Wisconsin Title Insurance Industry, Wisconsin Operations, 1978 .....	24
17	Profit Structure of Title Operations for the Wisconsin Title Insurance Industry, Wisconsin Operations, 1979 .....	25
18	Profit Structure of Title Operations for the Wisconsin Title Insurance Industry, Wisconsin Operations, 1980 .....	26
19	Distribution of Transaction Volume and Gross Revenue for the Wisconsin Title Insurance Industry, 1977 .....	28
20	Distribution of Transaction Volume and Gross Revenue for the Wisconsin Title Insurance Industry, 1978 .....	29
21	Distribution of Transaction Volume and Gross Revenue for the Wisconsin Title Insurance Industry, 1979 .....	30
22	Distribution of Transaction Volume and Gross Revenue for the Wisconsin Title Insurance Industry, 1980 .....	31



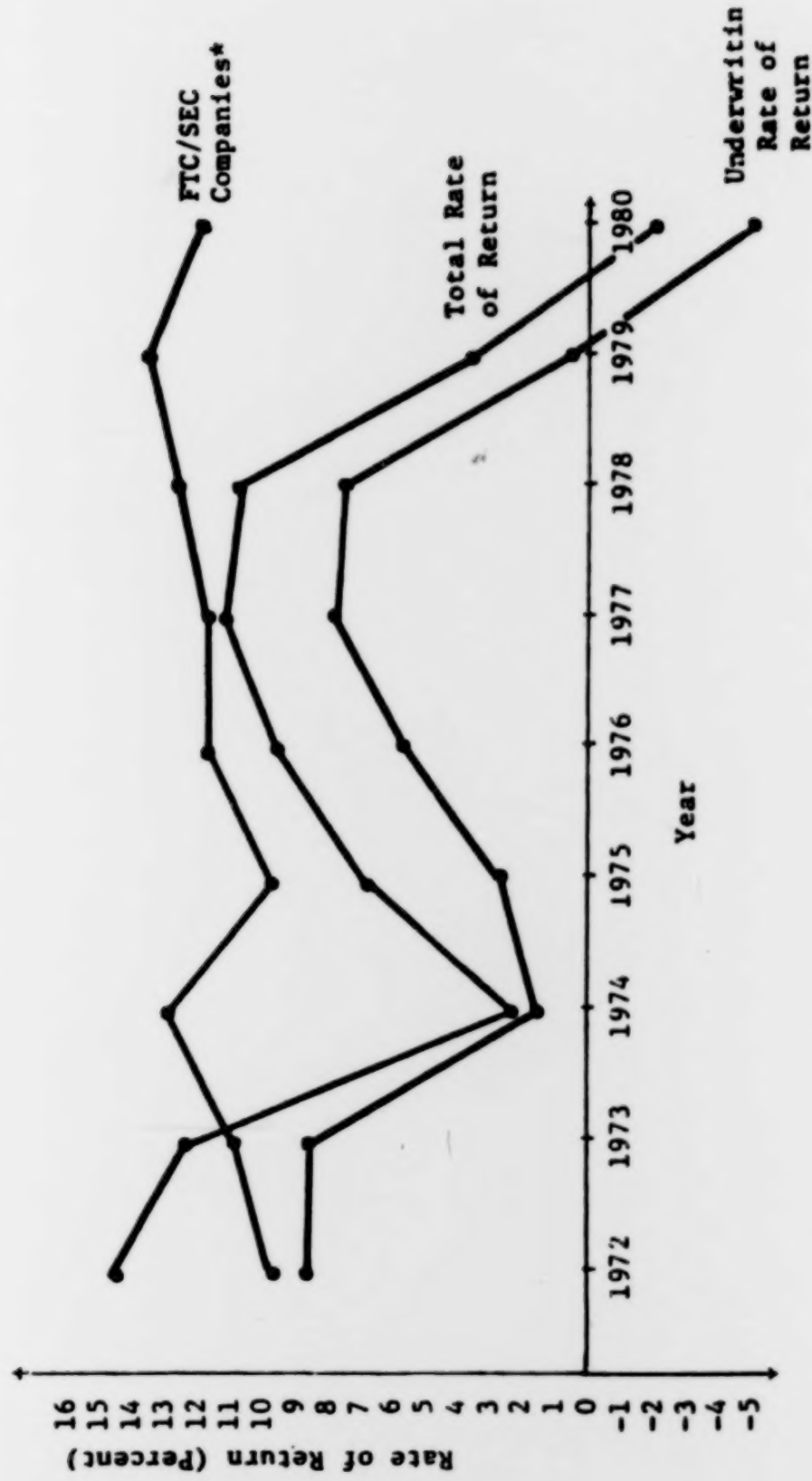


**FIGURE 1**

**AFTER-TAX RATES OF RETURN ON TOTAL CAPITAL  
OF THE WISCONSIN TITLE INSURANCE INDUSTRY**

**WISCONSIN OPERATIONS**

**1972-1980**

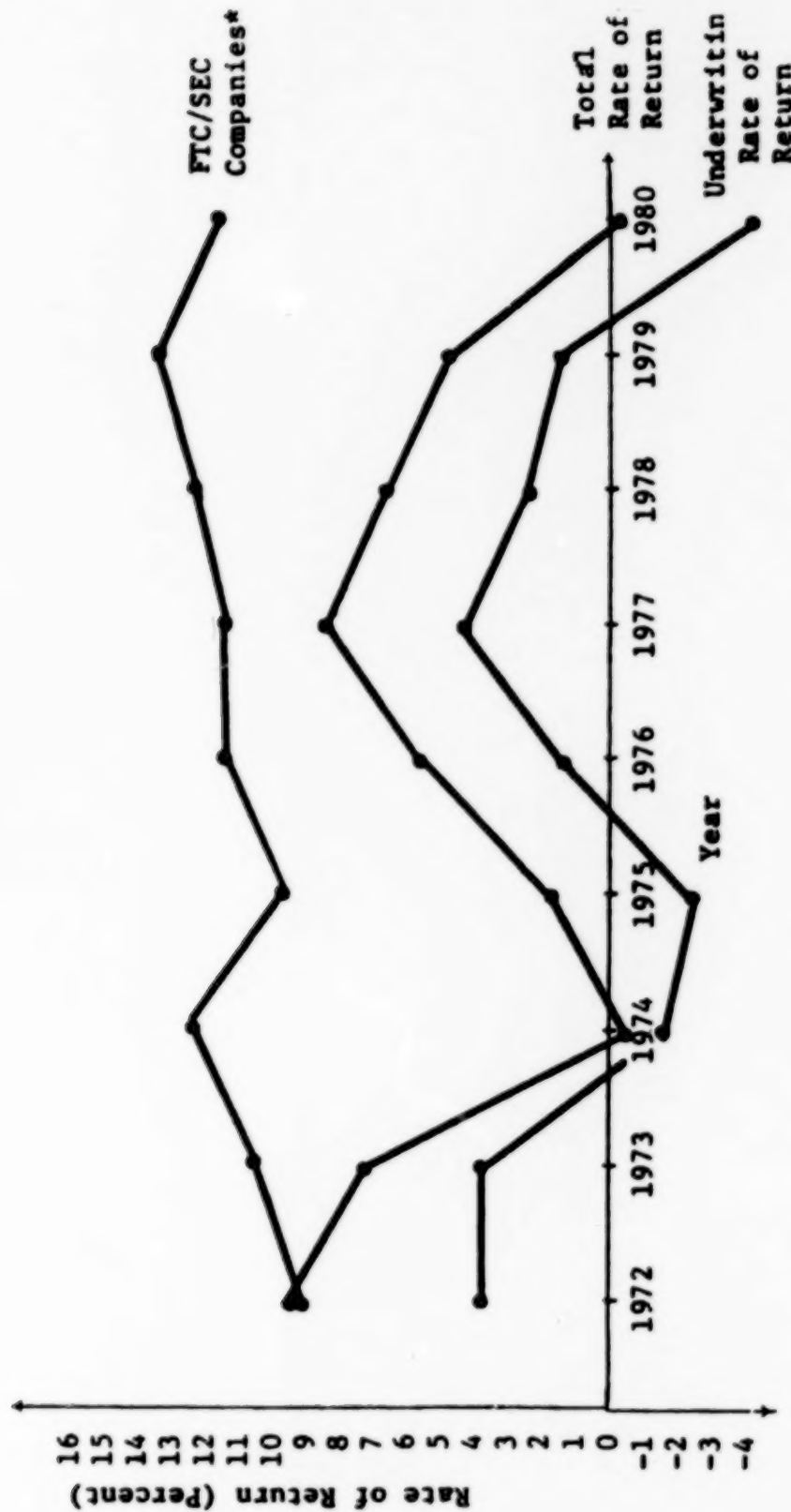


\*After-tax rates of return on total capital, FTC/SEC companies. See Tables 7 and 10.

**FIGURE 2**

**AFTER-TAX RATES OF RETURN ON TOTAL CAPITAL  
OF THE WISCONSIN TITLE INSURANCE INDUSTRY  
OTHER STATES' OPERATIONS**

**1972-1980**



\*After-tax rates of return on total capital, FTC/SEC companies. See Tables 8 and 10.



[RESPONDENT'S TRIAL EXHIBIT  
RX 377]

WISCONSIN TITLE INSURANCE  
RATE SERVICE ORGANIZATION  
2100 Marine Plaza  
Milwaukee, Wisconsin 53202

October 21, 1982

Mr. Norman Wirtz  
c/o Wisconsin Insurance Dept.  
123 West Washington Avenue  
Madison, Wisconsin 53702

Dear Norman:

Enclosed please find my copy of the Economic Analysis of the Wisconsin Title Insurance Industry 1972-81, as prepared by Arthur D. Little, Inc. I was somewhat surprised that you said your department had not received a copy before.

I appreciated the time spent in reviewing the material submitted by me for the rate increase proposal as recommended by the membership of the Rate Bureau.

Respectfully,

DONALD E. GRABSKI  
President

Encl (1)

cc: Mr. Irvin H. Plotkin

**[RESPONDENTS TRIAL EXHIBIT  
RX 514]**

August 28, 1980

Mr. George E. Hursig, Vice President  
Chicago Title Insurance Company  
111 West Washington Street  
Chicago, Illinois 60602

RE: JULY 10TH RATE FILING

This is in confirmation of our meeting, yesterday, with Mr. James, Mr. Bonita and you, in our office.

Even though we still object to the use of inadequate rates, in view of the present circumstances surrounding the title insurance industry in our State, and your assurances that your company has already taken some steps to reverse the profitability trend, we are withdrawing our objection to the captioned submission.

However, should the additional data you agreed to provide this office, as available, indicate that the use of the rates has not brought forth the desired results and profits continue to decline, we will have no alternative but to request that you either increase rates or discontinue the sale of title insurance in our state.

Additionally, we would appreciate your giving consideration to the organization of an advisory committee to provide this office with a profitability study on the business of title insurance in Montana. I would appreciate the opportunity of discussing this with you at the Zone VI meeting in San Diego, next month.

Sincerely,

E. V. "SONNY" OMHOLT  
State Auditor & Ex Officio  
Commissioner of Insurance

Josephine M. Driscoll, CPIW  
Chief Deputy Insurance Commissioner

JMD:s

cc: Mr. Joseph C. Bonita  
Mr. Ted James—9/2/80

## [JOINT PHYSICAL EXHIBIT]

\* \* \* \* \*

ARIZ. REV. STAT. ANN.

\* \* \* \* \*

## § 20-341. Purpose of insurance rate regulation

The purpose of this article is to promote the public welfare by regulating insurance rates to the end that they shall not be excessive, inadequate or unfairly discriminatory, and to authorize and regulate cooperative action among insurers in rate making and in other matters within the scope of this article. Nothing in this article is intended to prohibit or discourage reasonable competition, or to prohibit or encourage, except to the extent necessary to accomplish the purpose stated in this section, uniformity in insurance rates, rating systems, rating plans or practices. This article shall be liberally interpreted to carry into effect the provisions of this section.

\* \* \* \* \*

## § 20-365. Cooperation in rate making

Cooperation among rating organizations and among rating organizations and insurers in rate making and in other matters within the scope of this article is authorized, if the filings resulting from such cooperation are subject to the provisions of this article. The director may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this article, he may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent, and requiring the discontinuance of such activity or practice.

\* \* \* \* \*

## § 20-375. Making of title insurance and escrow rates

A. Every title insurer that shall make its own rates, and every title insurance rating organization, shall make rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

1. The desirability for stability of rate structures;
2. The necessity, by encouraging growth in assets of title insurers in periods of high business activity, of assuring the financial solvency of title insurers in periods of economic depression; and
3. The necessity for paying dividends on the capital stock of title insurers sufficient to induce capital to be invested therein.

B. Every title insurer that shall make its own rates, and every title insurance rating organization, shall adopt basic classifications of policies or contracts of title insurance or escrow services which shall be used as the basis for rates.

C. Rates within each rate classification may, at the discretion of the title insurer which files its own rates, or at the discretion of the title insurance rating organization, be less than the cost of the expense elements in the case of smaller insurances or escrows, and the excess may be charged against the larger insurances or escrows without rendering the rates unfairly discriminatory.

D. There shall be no combined rate for the issuance of title insurance policies and escrow services rendered in connection with such insurance.

Amended by Laws 1977, Ch. 48, § 2.

\* \* \* \* \*



§ 20-376. Filing of title insurance and escrow rates

A. Every title insurer shall file with the director its schedules of fees, every manual of classifications, rules and plans pertaining thereto, and every modification of any of the foregoing which it proposes to use in this state. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of the coverage or service contemplated.

B. A title insurer may satisfy its obligations to make such filings by becoming a member of, or a subscriber to, a licensed title insurance rating organization which makes such filings, and by authorizing the director to accept such filings on its behalf.

C. Every title insurer shall make its filings directly or through a licensed title insurance rating organization which makes such filings, and all such filings may, at the option of such insurer, govern all of its or certain designated agents in this state, provided that any such insurer may elect to permit all or certain of its agents to make rate filings directly or to become a subscriber to a licensed title insurance rating organization which makes such filings.

D. The director shall make such review of the filings as may be necessary to carry out the provisions of this article.

E. Subject to the provisions of subsection H of this section, each filing shall be on file for a period of fifteen days before it becomes effective. The director may, upon written notice given within such period to the person making the filing, extend such waiting period for an additional period, not to exceed fifteen days, to enable him to complete the review of the filing. Further extensions of such waiting period may also be made with the consent of the person making the filing. Upon written application by the person making the filing, the director may authorize a filing or any part thereof which he has reviewed, to become effective before the expiration of the waiting period or any extension thereof.

F. Except in the case of rates filed under subsection H of this section, a filing which has become effective shall be deemed to meet the requirements of this article.

G. When the director finds that any rate for a particular kind or class of risk or escrow service cannot practicably be filed before it is used, or any contract or kind of title insurance or escrow service, by reason of rarity or peculiar circumstances, does not lend itself to advance determination and filing of rates, he may, under such rules and regulations as he may prescribe, permit such rate to be used without a previous filing and waiting period.

H. Beginning ninety days after the effective date of this section, no title insurer or title insurance agent shall charge any fee for any policy or contract of title insurance or escrow service except in accordance with filings or rates which are in effect for such title insurer or agent as provided in this section.

I. The director shall not have the power to regulate, or require the filing of, rates or fees for reinsurance policies, contracts or agreements, or for policies, contracts or agreements of excess coinsurance.

Amended by Laws 1977, Ch. 48, § 3.

\* \* \* \* \*

§ 20-377. Justification for title insurance and escrow rates

A. A title insurance or escrow rate filing shall be accompanied by a statement of the title insurer, agent, or title insurance rating organization making the filing, setting forth the basis upon which the rate was fixed, and the manner in which fees are to be computed. Any filing may be justified by:

1. The experience or judgment of the title insurer, agent, or title insurance rating organization making the filing,

2. Its interpretation of any statistical data relied upon,
3. The experience of other title insurers, agents, or title insurance rating organizations, or
4. Any other factors which the title insurer, agent, or title insurance rating organization deem relevant.

B. The statement and justification shall be open to public inspection after the rate to which it applies becomes effective.

Amended by Laws 1977, Ch. 48, § 4.

\* \* \* \* \*

#### § 20-378. Disapproval of title insurance and escrow filings

A. Before issuing an order of disapproval of a title insurance or escrow rate filing, the director shall hold a hearing upon not less than ten days' written notice, specifying in reasonable detail the matters to be considered at such hearing. Such notice shall be sent to every title insurer, agent, and title insurance rating organization which made such filing. If, after such hearing, the director shall find that such filing or a part thereof does not meet the requirements of this article, he shall issue an order specifying in what respects he finds that it so fails, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective if the filing or a part thereof has become effective under the provisions of § 20-376. A title insurer, agent, or title insurance rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of § 20-379 in the case of a deviation filing. Copies of every such order shall be sent to every title insurer, agent, and title insurance rating organization affected. Such an order shall not affect any contract or policy made or issued or escrow contracted prior to the expiration of the period set forth therein.

B. Any person or organization aggrieved with respect to any filing which is in effect may make written applica-

tion to the director for a hearing thereon but the title insurer or title insurance rating organization which made the filing shall not be authorized to proceed under this subsection. Such an application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, he shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every title insurer, agent, and title insurance rating organization which made such a filing. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of this article, he shall issue an order specifying in what respects he finds that such filing or a part thereof fails to meet the requirements of this article, stating when within a reasonable period thereafter such filing or a part thereof shall be deemed no longer effective. Copies of such an order shall be sent to the applicant and to every such title insurer, agent, and title insurance rating organization. Such an order shall not affect any contract or policy made or issued prior to the expiration of the period set forth therein.

C. No filing nor any modification thereof shall be disapproved if the rates in connection therewith meet the requirements of this article.

Amended by Laws 1977, Ch. 48, § 5.

\* \* \* \* \*

#### CONN. GEN. STAT. ANN.

\* \* \* \* \*

#### § 38-4. Duties of commissioner

The commissioner shall see that all laws respecting insurance companies are faithfully executed; shall pay to the treasurer all the fees which he has received and may administer oaths in the discharge of his duties. He shall



recommend to the general assembly changes which, in his opinion, should be made in the laws relating to insurance.

(1949 Rev., § 6029; 1959, P.A. 78, § 1.)

\* \* \*

Sec. 38-201c. Standards for the making and use of rates re commercial risk insurance. The following standards, methods and criteria shall apply to the making and use of rates pertaining to commercial risk insurance:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided or (2) a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable. No rate shall be held inadequate unless (A) it is unreasonably low for the insurance provided, and (B) continued use of it would endanger solvency of the insurer, or unless (C) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or, if continued, will have the effect of destroying competition or creating a monopoly.

(b) Consideration shall be given, to the extent possible, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses both country-wide and those specially applicable to this state, to investment income earned or realized by insurers both from their unearned premium and loss reserve funds, and to all other factors, including judgment factors, deemed relevant within and outside this state and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available. Consideration may be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(c) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(d) Risks may be grouped by classifications for the establishment of rates and minimum premiums, provided no surcharge on any motor vehicle liability or physical damage insurance premium may be assigned for (1) any accident involving only property damage of six hundred dollars or less or (2) any violation of section 14-219, unless such violation results in the suspension or revocation of the operator's license under section 14-111b; or (3) less than three violations of section 14-218a within any one-year period. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which provide for recognition of variations in hazards or expense provisions or both. Such rating plans may include application of the judgment of the insurer and may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(e) Each rating plan shall establish appropriate eligibility criteria for determining significant risks which are to qualify under the plan, provided all such plans shall include as an eligible significant risk the state of Connecticut or its instrumentalities. Rating plans which comply with the provisions of this subsection shall be deemed to produce rates which are not unfairly discriminatory.

(f) The commissioner may adopt regulations in accordance with the provisions of chapter 54 concerning rating plans to effectuate the provisions of this section.

(1969, P.A. 665, S. 3; P.A. 77-199, S. 2, 12; 77-200; P.A. 78-25; P.A. 79-204, S. 1, 3; 79-609, S. 4; P.A. 80-276, S. 2, 6; P.A. 82-353, S. 4, 26; P.A. 84-165, S. 1.)

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Sec. 38-201d. Insurers concerted action re rate making; preparation of policies, etc. Subject to and in compliance with the provisions of sections 38-201a to 38-201s, inclusive, authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policies or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data or carrying on of research.

(1969, P.A. 665, S. 4.)

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Sec. 38-201m. Records and information to be maintained. Approval of rules and statistical plans re loss and expense experience. (a) Every insurer, rating organization or advisory organization and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it so that such records will be available at all reasonable times to enable the insurance commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan or rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization or advisory organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in

such organization, to the extent that the insurer uses the rates, rating plans, rating systems or recommendations of such organization.

(b) The insurance commissioner shall approve reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each admitted insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In approving such rules and plans, the commissioner shall give due consideration to the rating systems in use in this state and in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it provided that with respect to private passenger nonfleet automobile insurance, the commissioner may require that claims and loss experience data be allocated, compiled and reported by town. The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(1969, P.A. 665, S. 13; P.A. 77-614, S. 163, 610; P.A. 80-482, S. 311, 348; P.A. 82-353, S. 9.)

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Sec. 38-201n. Review of rating plans and rules and form of commercial risk insurance contracts. (a) With respect to rates pertaining to commercial risk insurance, and subject to the provisions of subsection (b) of this section with respect to workers' compensation and employers' liability insurance, on or before the effective date

thereof, every admitted insurer shall submit to the insurance commissioner for his information, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual of classifications, rules and rates, and every minimum, class rate, rating plan, rating schedule and rating system and any modification of the foregoing which it uses. Such submission by a licensed rating organization of which an insurer is a member or subscriber shall be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the manuals, minimums, class rates, rating plans, rating schedules, rating systems, policy or bond forms of such organization. The information shall be open to public inspection after its submission.

(b) Each filing as described in subsection (a) of this section for workers' compensation or employers' liability insurance shall be on file with the insurance commissioner for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter, unless disapproved by the commissioner within the waiting period or any extension thereof. If, within the waiting period or any extension thereof, the commissioner finds that a filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing, specifying therein in what respects he finds such filing fails to meet

the requirements of this chapter and stating that such filing shall not become effective. Such finding of the commissioner shall be subject to review as provided in section 38-349.

(c) The form of any insurance policy or contract the rates for which are subject to the provisions of this chapter, other than fidelity, surety or guaranty bonds, and the form of any endorsement modifying such insurance policy or contract, shall be filed with the insurance commissioner prior to its issuance. If at any time the commissioner finds that any such policy, contract or endorsement is not in accordance with such provisions or any other provision of law, he may issue an order disapproving the issuance of such form and stating his reasons therefor. The provisions of section 38-349 shall apply to any such order issued by the commissioner.

(1969, P.A. 665, S. 14; 1971, P.A. 498; P.A. 75-8; P.A. 77-614, S. 163, 610; P.A. 79-376, S. 61; P.A. 80-482, S. 312, 348; P.A. 81-94; P.A. 82-353, S. 10, 26.)

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Sec. 38-201p. Complaint and hearing. Practices prohibited. Suspension and revocation of certificate of authority or license. Appeals. (a) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative, and shall be in writing. If the request is not granted within thirty days after it is made, the requester may treat it as rejected. Any person aggrieved by the action of an insurer or rating organization in refusing the review requested, or in failing or refusing to grant all or part of the relief requested, may file a written complaint and request for hearing



with the insurance commissioner, specifying the grounds relied upon. If said commissioner has information concerning a similar complaint he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of sections 38-201a to 38-201s, inclusive, and that the complainant could be aggrieved if the violation is proven, he shall proceed as provided in subsection (b) of this section.

(b) If after examination of an insurer, rating organization, advisory organization, or group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, or upon the basis of other information, or upon sufficient complaint as provided in subsection (a) of this section, the insurance commissioner has good cause to believe that such insurer, organization, group or association or any rate, rating plan or rating system made or used by any such insurer or rating organization, does not comply with the requirements and standards of said sections applicable to it, he shall, unless he has good cause to believe such noncompliance is wilful, give notice in writing to such insurer, organization, group or association stating therein what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than ten days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between said commissioner and the parties unless a hearing is held in accordance with the provisions of subsection (c) of this section.

(c) If the insurance commissioner has good cause to believe such noncompliance to be wilful, or if within the period prescribed by said commissioner in the notice required by subsection (b) of this section the insurer, organization, group or association does not make such changes as may be necessary to correct the noncompliance

specified by said commissioner or establish to the satisfaction of said commissioner that such specified noncompliance does not exist, then said commissioner may hold a public hearing in connection therewith, provided within a reasonable period of time, which shall be not less than ten days before the date of such hearing, he shall mail a written notice specifying the matters to be considered at such hearings to such insurer, organization, group or association. If no notice has been given as provided in subsection (b) of this section such notice shall state therein in what manner and to what extent noncompliance is alleged to exist. The hearing shall not include any additional subjects not specified in the notices required by said subsection (b).

(d) If after a hearing pursuant to subsection (c) of this section, the insurance commissioner finds (1) that any rate, rating plan or rating system violates the provisions of sections 38-201a to 38-201s, inclusive, applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited; (2) that an insurer, rating organization, advisory organization, or a group, association or other organization of insurers which engages in joint underwriting or joint reinsurance, is in violation of the provisions of said sections applicable to it other than the provisions dealing with rates, rating plans or rating systems, he may issue an order to such insurer, organization, group or association which has been the subject of the hearing specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter; (3) that the violation of any of the provisions of said sections applicable to it by any insurer or rating organization which has been the subject of hearing was wilful, he may suspend or revoke, in whole or in part, the



certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing; (4) that any rating organization has wilfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization in addition to any other penalty provided in said sections; (5) in addition to other penalties provided by law the insurance commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order, which fails to comply within the time limited by such order or any extension thereof which said commissioner may grant, with an order of said commissioner lawfully made by him pursuant to this subsection and effective pursuant to subdivision (7) of this subsection; (6) except as otherwise provided in sections 38-201a to 38-201s, inclusive, all proceedings in connection with the denial, suspension or revocation of a license or certificate of authority under said sections shall be conducted in accordance with the provisions of section 38-20 and the insurance commissioner shall have all the powers granted to him therein; (7) any findings, determination, rule, ruling or order made by the insurance commissioner, in accordance with the provisions of said sections, shall be subject to review by appeal in accordance with the provisions of section 4-183. Such appeal may be filed at any time before the effective date of such finding, determination, rule, ruling or order. No such finding, determination, rule, ruling or order shall become effective before the expiration of twenty days after notice and a copy thereof are mailed or delivered to the person affected, and any finding, determination, rule, ruling or order of said commissioner so submitted for review shall not become effective for a further period of fifteen days after the petition for review is filed with the court. The

court may stay the effectiveness thereof for a longer period.

(1969, P.A. 665, S. 16; P.A. 76-436, S. 633, 681; P.A. 77-603, S. 118, 125, 77-614, S. 163, 610; P.A. 78-331, S. 35, 58; P.A. 80-482, S. 314, 348.)

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Sec. 38-201v. Standards for the making and use of rates re personal risk insurance. Regulations. The following standards, methods and criteria shall apply to the making and use of rates pertaining to personal risk insurance:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(1) A rate in a competitive market is not excessive. A rate in a noncompetitive market including a rate for insurance provided pursuant to section 38-114f, 38-185l or 38-201h is excessive if it is unreasonably high for the insurance provided.

(2) No rate shall be held inadequate unless (A) it is unreasonably low for the insurance provided, and (B) continued use of it would endanger solvency of the insurer, or unless (C) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or, if continued will have, the effect of destroying competition or creating a monopoly.

(b) In determining whether rates comply with the excessiveness standard in a noncompetitive market under subdivision (1) of subsection (a) of this section, the inadequacy standard under subdivision (2) of subsection (a) of this section and the requirement that rates not be unfairly discriminatory, the following criteria shall apply:

(1) Consideration may be given, to the extent possible, to past and prospective loss experience within and outside this state, to conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and con-

tingencies, to past and prospective expenses both country-wide and those specially applicable to this state, to investment income earned or realized by insurers both from their unearned premium and loss reserve funds, and to all other factors, including judgment factors, deemed relevant within and outside this state and in the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most recent five-year period for which such experience is available. Consideration may be given in the making and use of rates to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

(2) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof.

(3) Risks may be grouped by classifications for the establishment of rates and minimum premiums, provided that with respect to private passenger nonfleet automobile insurance, any change in territorial classifications shall be subject to prior approval by the insurance commissioner, and provided no surcharge on any motor vehicle liability or physical damage insurance premium may be assigned for (A) any accident involving only property damage of six hundred dollars or less; or (B) any violation of section 14-219 unless such violation results in the suspension or revocation of the operator's license under section 14-111b; or (C) less than three violations of section 14-218a within any one-year period. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which provide for recognition of variations in hazards or expense provisions or both. Such rating plans may include application of the judgment of the insurer and may measure any dif-

ferences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) Each rating plan shall establish appropriate eligibility criteria for determining significant risks which are to qualify under the plan. Rating plans which comply with the provisions of this subdivision shall be deemed to produce rates which are not unfairly discriminatory.

(5) The commissioner may adopt regulations in accordance with the provisions of chapter 54 concerning rating plans to effectuate the provisions of this section.

(P.A. 82-353, S. 5, 26; P.A. 84-165, S. 2.)

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Sec. 38-201x. Review of rates re personal risk insurance and residual markets in competitive or noncompetitive markets. (a) The following procedures shall apply with respect to rates pertaining to personal risk insurance and residual markets:

(1) In a competitive market, every insurer shall file with the commissioner all rates and supplementary rate information to be used in this state, provided that such rates and information need not be filed for inland marine risks which by general custom of the business are not written according to manual rules or rating plans. No such filings may be made by a rating organization on behalf of any insurer. Such rates and supplementary rate information shall be filed by the effective date of the filing or the date that premium billing notices reflecting the new rates are sent to insureds or agents, whichever is earlier. In a competitive market, if the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the commissioner at least thirty days before the effective date, all such rates and such supplementary rate information and supporting information as prescribed by the commissioner. Upon application



by the filer, the commissioner may authorize an earlier effective date for the filing.

(2) In a noncompetitive market, every insurer shall file with the commissioner all rates and supplementary rate information for that market and such supporting information as is required by the commissioner. For purposes of subsection (d) of section 7-479e, subdivision (9) of section 38-61, section 38-175f, subsection (a) of section 38-175h, sections 38-175x, 38-201a and 38-201c, subsection (b) of section 38-201j, sections 38-201k, 38-201m, 38-201n, 38-201r, 38-201v to 38-201dd, inclusive, and 38-342 to 38-344, inclusive, residual markets, title insurance and credit property insurance are deemed to be noncompetitive markets. All rates and supplementary rate information and such supporting information as is required by the commissioner, shall also be filed with the commissioner for insurance provided pursuant to section 38-114f, 38-185l or 38-201h. Such rates and supplementary rate information and supporting information required by the commissioner shall be on file with the commissioner for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this chapter, unless disapproved by the commissioner within the waiting period or any extension thereof. If, within the waiting period or any extension thereof, the commissioner finds that a filing does not meet the requirements of this chapter, he shall send to the insurer or rating organization which made such filing written notice of disapproval of such filing, specifying therein in what respects he finds

such filing fails to meet the requirements of this chapter and stating that such filing shall not become effective. Such finding of the commissioner shall be subject to review as provided in section 38-349.

(3) An insurer may file rates by reference, with or without deviation, to rates charged by another insurer which were filed and are in effect if the insurer's direct written premium for the applicable line of insurance is less than one-half of one percent of the total statewide direct written premium for that line, as determined from the annual statements filed by insurers licensed to do business in this state and as calculated by the National Association of Insurance Commissioners from its data base. Supporting information shall not be required for rates filed by reference pursuant to this subsection. For purposes of this subdivision the term "insurer" shall include two or more admitted insurers having a common ownership or operating in this state under common management or control.

(4) Rates filed pursuant to this section shall be filed in such form and manner as is prescribed by the commissioner. Whenever a filing made pursuant to subdivision (1) or (2) of subsection (a) of this section is not accompanied by the information upon which the insurer supports such filing and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this chapter, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (A) the experience or judgment of the insurer making the filing, (B) its interpretation of any statistical data it relies upon, (C) the experience of other insurers or (D) any other relevant factors.

(5) All rates, supplementary rate information and any supporting information for risks filed under subsection (d) of section 7-479e, subdivision (9) of section 38-61,



section 38-175f, subsection (a) of section 38-175h, sections 38-175x, 38-201a and 38-201c, subsection (b) of section 38-201j, sections 38-201k, 38-201m, 38-201n, 38-201r, 38-201v to 38-201dd, inclusive, and 38-342 to 38-344, inclusive, shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

(b) Rates for insurance described in subsection (a) of this section shall be subject to review as follows:

(1) Rates subject to prefiling under subdivision (1) or (2) of subsection (a) of this section may be reviewed and disapproved before their effective date, provided that rates for insurance provided pursuant to section 38-114f, 38-185l or 38-201h shall not be effective until approved by the commissioner. Any rate may be reviewed and disapproved subsequent to its effective date.

(2) The commissioner may disapprove a rate if the insurer fails to comply with the filing requirements of this section. The commissioner shall disapprove a rate for use in a competitive market if he finds that the rate is inadequate or unfairly discriminatory under subsection (a) of section 38-201v. The commissioner shall disapprove a rate for use in a noncompetitive or residual market if he finds the rate is excessive, inadequate or unfairly discriminatory under subsection (a) of section 38-201v.

(3) If the commissioner finds that a reasonable degree of competition does not exist in a market in accordance with section 38-201w, he may require that the insurers in that market file supporting information with respect to existing rates. If the commissioner believes that such rates may violate any of the requirements of subsection (d) of section 7-479e, subdivision (9) of section 38-61, section 38-175f, subsection (a) of section 38-175h, sections 38-175x, 38-201a, 38-201c, subsection (b) of section 38-201j, sections 38-201k, 38-201m, 38-201n, 38-201r,

38-201v to 38-201dd, inclusive, and 38-342 to 38-344, inclusive, he may proceed as provided in section 38-201p. If the commissioner believes that rates in a competitive market violate the inadequacy or unfair discrimination standards in section 38-201v or any other applicable requirement of subsection (d) of section 7-479e, subdivision (9) of section 38-61, section 38-175f, subsection (a) of section 38-175h, sections 38-175x, 38-201a, 38-201c, subsection (b) of section 38-201j, sections 38-201k, 38-201m, 38-201n, 38-201r, 38-201v to 38-201dd, inclusive, and 38-342 to 38-344, inclusive, he may require the insurers in that market to file supporting information with respect to existing rates. If after reviewing the supporting information, the commissioner continues to believe that such rates may violate these requirements, he may proceed as provided in section 38-201p. The commissioner may disapprove, without hearing, rates prefled pursuant to subdivision (1) or (2) of subsection (a) of this section that have not become effective, provided that the insurer whose rates have been disapproved shall be given a hearing pursuant to section 38-349.

(4) If the commissioner disapproves a rate, he shall issue an order specifying the respects in which it fails to meet the requirements of subsection (d) of section 7-479e, subdivision (9) of section 38-61, section 38-175f, subsection (a) of section 38-175h, sections 38-175x, 38-201a, 38-201c, subsection (b) of section 38-201j, sections 38-201k, 38-201m, 38-201n, 38-201r, 38-201v to 38-201dd, inclusive, and 38-342 to 38-344, inclusive. For rates in effect at the time of the disapproval, the commissioner shall state, within a reasonable period of time, when the further use of such rate in contracts of insurance made thereafter shall be prohibited. The order shall be issued within thirty days after the hearing or within such reasonable time extension as the commissioner may determine. Such order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on such date.

(5) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall specify interim rates. Upon appeal from any such order of the commissioner the court may, upon request of the appealing insurer, stay such order, provided that the insurer places in an escrow account the difference, as received, between the disapproved rates and the interim rates specified by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds to be distributed appropriately, with interest at the legal rate as provided in section 37-1, except that minimal refunds to policyholders are not required to be distributed.

(P.A. 82-353, S. 11, 26.)

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33-1-311. General powers and duties. (1) The commissioner shall enforce the provisions of this code and shall execute the duties imposed upon him by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon him by or reasonably implied from the provisions of this code.

(3) The commissioner may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as he may deem proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.

(4) The commissioner shall have such additional powers and duties as may be provided by other laws of this state.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709 (1) thru (3), (5).

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33-1-313. Rules—notice, hearing, and penalty. (1) The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code, except 33-30-1012. No such rule shall extend, modify, or conflict with any law of this state or the reasonable implications thereof. Any such rule affecting persons or matters other than the personnel or the internal affairs of the commissioner's office shall be made or amended only after a hearing thereon of which notice was given as required by 33-1-703. If reasonably possible the commissioner shall set forth the proposed rule or amendment in or with the notice of hearing. No such rule or amendment as to which a hearing is required shall be effective until it has been on file as a public record in the commissioner's office for at least 10 days.

(2) In addition to any other penalty provided, willful violation of any such rule shall subject the violator to such administrative penalties as may be applicable under this code as for violation of the provision as to which such rule relates.

History: En. Sec. 29, Ch. 286, L. 1959; R.C.M. 1947, 40-2710.

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33-1-315. Witnesses—production of records—subpoena—failure to respond—perjury. (1) With respect to the subject of any examination, investigation, or hearing being conducted by him, the commissioner or his examiner, if general written authority has been given the examiner by the commissioner, may subpoena witnesses and administer oaths or affirmations and examine any individual under oath and may require and compel the production of records, books, papers, contracts, and other documents by attachments, if necessary. If in connection with any examination of an insurer the commissioner desires to examine any officer, director, or manager thereof who is then outside this state, the commissioner may conduct and enforce by all appropriate and available means any such examination under oath in any other state or territory



of the United States in which such officer, director, or manager may then presently be, to the full extent permitted by the laws of such other state or territory, this special authorization considered.

(2) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a district court. Witness fees, mileage, and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the person being examined if such person is found to have been in violation of the law as to the matter with respect to which such witness was subpoenaed or by the person, if other than the commissioner, at whose request the hearing is held.

(3) Subpoenas of witnesses shall be served in the same manner as if issued from a district court. If any individual fails to obey a subpoena lawfully served, the commissioner shall report such disobedience, together with a copy of the subpoena and proof of service thereof, to the district court for the county in which the individual was required to appear. Such court shall cause such individual to be produced and shall impose penalties as though he had disobeyed a subpoena issued out of such court.

(4) Any person knowingly failing to attend, answer, or produce records, documents, or other evidence requested by the commissioner or who knowingly fails to give the commissioner full and truthful information and answer in writing to any material written inquiry of the commissioner, relative to the subject of any such examination, investigation, or hearing, or knowingly fails to appear and testify under oath before the commissioner is guilty of a misdemeanor.

(5) Any person knowingly testifying falsely under oath as to any matter material to any such examination, investigation, or hearing is guilty of perjury, and upon conviction shall be punished according to 45-7-201.

History: En. Sec. 37, Ch. 286, L. 1959; R.C.M. 1947, 40-2718; amd. Sec. 5, Ch. 198, L. 1979.

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33-1-317. Penalty imposed by commissioner. The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of \$5,000 upon a person found to have violated any provision of this code, except 33-30-1012, or regulation duly promulgated by the commissioner, except that the fine imposed upon agents or adjusters shall not exceed \$500. Said fine shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the commissioner in the name of the state of Montana. Imposition of any fine hereunder shall be an order from which an appeal may be taken, pursuant to the provisions of 33-1-711.

History: En. Sec. 28, Ch. 286, L. 1959; amd. Sec. 1, Ch. 16, L. 1969; R.C.M. 1947, 40-2709 (4).

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33-16-101. Purpose and intent. (1) The purpose of this chapter is to promote the public welfare by regulating insurance rates as herein provided to the end that they shall not be excessive, inadequate, or unfairly discriminatory, to authorize the existence and operation of qualified rating organizations and advisory organizations and require that specified rating services of such rating organizations be generally available to all admitted insurers, and to authorize cooperation between insurers in rate-making and other related matters.

(2) It is the express intent of this chapter to permit and encourage competition between insurers on a sound financial basis, and nothing in this chapter is intended to give the commissioner power to fix and determine a rate level by classification or otherwise.

History: En. Sec. 1, Ch. 362, L. 1969; R.C.M. 1947, 40-3634.

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33-16-111. Issuance of order—suspension or revocation of certificate of authority or license. If, after a hearing pursuant to 33-16-206, the commissioner finds:

(1) that an insurer, rating organization, advisory organization, or a group, association, or other organization of insurers which enagages in joint underwriting or joint reinsurance is in violation of the provisions of this chapter applicable to it, other than the provisions dealing with rates, rating plans, or rating systems, he may issue an order to such insurer, organization, group, or association which has been the subject of the hearing, specifying in what respects such violation exists and requiring compliance within a reasonable time thereafter;

(2) that the violation of any of the provisions of this chapter applicable to it by any insurer or rating organization which has been the subject of hearing was willful, he may suspend or revoke, in whole or in part, the certificate of authority of such insurer or the license of such rating organization with respect to the class of insurance which has been the subject matter of the hearing;

(3) that any rating organization has willfully engaged in any fraudulent or dishonest act or practices, he may suspend or revoke, in whole or in part, the license of such organization, in addition to any other penalty provided in this chapter.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662 (part).

33-16-112. Failure to comply with order—suspension or revocation of license or certificate. In addition to other penalties provided in this code, the commissioner may suspend or revoke, in whole or in part, the license of any rating organization or the certificate of authority of any insurer with respect to the class or classes of insurance specified in such order which fails to comply within the time limited by such order or any extension thereof

which the commissioner may grant, with an order of the commissioner lawfully made by him pursuant to 33-16-111 and 36-16-211 and effective pursuant to 33-16-113.

History: En. Sec. 30, Ch. 362, L. 1969; R.C.M. 1947, 40-3663.

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33-16-201. Standards applicable to rates. The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(1) (a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory.

(b) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which such rate is applicable.

(c) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided and the continued use of such rate endangers the solvency of the insurer using the same or unless such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued will have, the effect of destroying competition or creating a monopoly.

(2) (a) Consideration shall be given, to the extent applicable, to past and prospective loss experience within and outside this state, to revenues and profits from reserves, to conflagration and catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to past and prospective expenses, both countrywide and those specially applicable to this state, and to all other factors, including judgment factors, deemed relevant within and outside this state. In the case of fire insurance rates, consideration may be given to the experience of the fire insurance business during the most

recent 5-year period for which such experience is available.

(b) Consideration may also be given in the making and use of rates to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers.

(3) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the operating methods of any such insurer or group with respect to any kind of insurance or with respect to any subdivision or combination thereof.

(4) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that have a probable effect upon losses or expenses. Classifications or modifications of classifications of risks may be established, based upon size, expense, management, individual experience, location or dispersion of hazard, or any other reasonable considerations, except that no special risk classification may be established based on anything adverse to the insured in a driving record which is 3 years old or older. Such classifications and modifications shall apply to all risks under the same or substantially the same circumstances or conditions.

History: En. Sec. 7, Ch. 362, L. 1969; amd. Sec. 1, Ch. 54, L. 1973; amd. Sec. 1, Ch. 104, L. 1973; R.C.M. 1947, 40-3640.

33-16-202. Recording and reporting of loss and expense experience. (1) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the

recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

History: En. Sec. 36, Ch. 362, L. 1969; R.C.M. 1947, 40-3669.

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33-16-203. Rates filed. Every insurer, rating organization, or advisory organization shall file with the commissioner all rates intended for use within this state, together with supporting data sufficient to substantiate such filing. The filing required by this subsection may be made by rating organizations on behalf of their members and subscribers; but this provision does not prohibit a member or subscriber from filing any such rates on its own behalf. Any deviations from a rating organization's rates



by a member or subscriber must be filed with the commissioner and must be accompanied by supporting data.

History: En. Sec. 21, Ch. 362, L. 1969; amd. Sec. 1, Ch. 469, L. 1977; R.C.M. 1947, 40-3654(2); amd. Sec. 1, Ch. 241, L. 1979.

**33-16-204.**—Review of rates on request by aggrieved person. (1) Any person aggrieved by any rate charged, rating plan, rating system, or underwriting rule followed or adopted by an insurer or rating organization may request the insurer or rating organization to review the manner in which the rate, plan, system, or rule has been applied with respect to insurance afforded him. Such request may be made by his authorized representative and shall be written.

(2) If the request is not granted within 30 days after it is made, the requester may treat it as rejected.

(3) Any person aggrieved by the action of an insurer or rating organization in refusing the review requested or in failing or refusing to grant all or part of the relief requested may file a written complaint and request for hearing with the commissioner, specifying the grounds relied upon. If the commissioner has information concerning a similar complaint, he may deny the hearing. If he believes that probable cause for the complaint does not exist or that the complaint is not made in good faith, he shall deny the hearing. Otherwise, and if he finds that the complaint charges a violation of this chapter and that the complainant would be aggrieved if the violation is proven, he shall proceed as provided in 33-16-205.

History: En. Sec. 26, Ch. 362, L. 1969; R.C.M. 1947, 40-3659.

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**33-16-205.** Noncompliance of rates—notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers which engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that such insurer,

organization, group, or association or any rate, rating plan, or rating system made or used by any such insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, he shall, unless he has good cause to believe such noncompliance is willful, give notice, in writing, to such insurer, organization, group, or association operating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 10 days thereafter, in which such noncompliance may be corrected. Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206.

History: En. Sec. 27, Ch. 362, L. 1969; R.C.M. 1947, 40-3660.

**33-16-206.** Hearings—notice—subject of hearing. (1) If the commissioner has good cause to believe such noncompliance to be willful or if within the period prescribed by the commissioner in the notice required by 33-16-205 the insurer, organization, group, or association does not make such changes as may be necessary to correct the noncompliance specified by the commissioner or establish to the satisfaction of the commissioner that such specified noncompliance does not exist, then the commissioner may hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than 10 days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to such insurer, organization, group, or association. If no notice has been given as provided in 33-16-205, such notice shall state therein in what manner and to what extent noncompliance is alleged to exist.

(2) The hearing shall not include any additional subjects not specified in the notices required by 33-16-205 or this section.

History: En. Sec. 28, Ch. 362, L. 1969; R.C.M. 1947, 40-3661.



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33-16-211. Order prohibiting use of rate or rating system. If, after a hearing pursuant to 33-16-206, the commissioner finds that any rate, rating plan, or rating system violates the provisions of this chapter applicable to it, he may issue an order to the insurer or rating organization which has been the subject of the hearing, specifying in what respects such violation exists and stating when, within a reasonable period of time, the further use of such rate or rating system by such insurer or rating organization in contracts of insurance made thereafter shall be prohibited.

History: En. Sec. 29, Ch. 362, L. 1969; R.C.M. 1947, 40-3662 (part). \* \* \*

33-16-301. Insurers authorized to act in concert. Subject to and in compliance with the provisions of this chapter authorizing insurers to be members or subscribers of rating or advisory organizations or to engage in joint underwriting or joint reinsurance, two or more insurers may act in concert with each other and with others with respect to any matters pertaining to the making of rates or rating systems, the preparation or making of insurance policy or bond forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss or expense statistics or other information and data, or carrying on of research.

History: En. Sec. 8, Ch. 362, L. 1969; R.C.M. 1947, 40-3641. \* \* \*

33-16-401. Rating organizations—compliance—application. (1) No rating organization shall conduct its operations in this state without first filing with the commissioner a written application for and securing a license to act as a rating organization. Any rating organization may make application for and obtain a license as a rating organization if it shall meet the requirements for license set forth in this chapter.

(2) Every such rating organization shall file with its application:

(a) a copy of its constitution, its articles of incorporation, agreement, or association, and of its bylaws and rules governing the conduct of its business, all duly certified by the custodian or the originals thereof;

(b) a list of its members and subscribers;

(c) the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served; and

(d) a statement of its qualifications as a rating organization.

History: En. Sec. 14, Ch. 362, L. 1969; R.C.M. 1947, 40-3647.

33-16-402. Evidence prerequisite to license. To obtain and retain a license, a rating organization shall provide satisfactory evidence to the commissioner that it will:

(1) permit any admitted insurer to become a member of or a subscriber to such rating organization at a reasonable cost and without discrimination or withdrawal therefrom;

(2) neither have nor adopt any rule or exact any agreement, the effect of which would be to require any member or subscriber, as a condition to membership or subscription, to adhere to its rates, rating plans, rating systems, underwriting rules, or policy or bond forms;

(3) neither adopt any rule nor exact any agreement, the effect of which would be to prohibit or regulate the payment or dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(4) neither practice nor sanction any plan or act of boycott, coercion, or intimidation;

(5) neither enter into nor sanction any contract or act by which any person is restrained from lawfully engaging in the insurance business;

(6) notify the commissioner promptly of every change in its constitution, its articles of incorporation, agree-

ment, or association, and of its bylaws and rules governing the conduct of its business; its list of members and subscribers; and the name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such organization may be served;

(7) comply with the provisions of 33-16-105 and 33-16-203.

History: En. Sec. 15, Ch. 362, L. 1969; R.C.M. 1947, 40-3648.

**33-16-403.** Examination of application and investigation of applicant—issuance of license—fee. (1) The commissioner shall examine each application for license to act as a rating organization and the documents filed therewith and may make such further investigation of the applicant, its affairs, and its proposed plan of business as he deems desirable.

(2) The commissioner shall issue the license applied for within 60 days of its filing with him if, from such examination and investigation, he is satisfied that:

(a) the business reputation of the applicant and its officers is good;

(b) the facilities of the applicant are adequate to enable it to furnish the services it proposes to furnish;

(c) the applicant and its proposed plan of operation conform to the requirements of this chapter.

(3) Otherwise, but only after hearing upon notice, the commissioner shall, in writing, deny the application and notify the applicant of his decision and his reasons therefor.

(4) The commissioner may grant an application in part only and issue a license to act as a rating organization for one or more of the classes of insurance or subdivisions thereof or class of risk, or a part of combination thereof as are specified in the application, if the applicant qualifies for only a portion of the classes applied for.

(5) Licenses issued pursuant to this section shall remain in effect until revoked as provided in this chapter. The fee for the license shall be \$100 annually which shall be deposited in the general fund.

History: En. Sec. 16, Ch. 362, L. 1969; amd. Sec. 1, Ch. 206, L. 1973; R.C.M. 1947, 40-3649.

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## 601.41 General duties and powers

(1) Duties. The commissioner shall administer and enforce chs. 600 to 646. The commissioner shall act as promptly as possible under the circumstances on all matters placed before the commissioner.

(2) Powers. The commissioner shall have all powers specifically granted the commissioner, or reasonably implied in order to enable the commissioner to perform the duties imposed by sub. (1).

(3) Rules. The commissioner shall have rule-making authority under s. 227.014(2).

(4) Enforcement proceedings. (a) The commissioner shall issue such prohibitory, mandatory and other orders as are necessary to secure compliance with the law.

(b) On request of any person who would be affected by an order under par. (a), the commissioner may issue a declaratory order to clarify the person's rights or duties.

(5) Informal hearings and public meetings. The commissioner may at any time hold informal hearings and public meetings, whether or not called hearings, for the purposes of investigation, the ascertainment of public sentiment, or informing the public. No effective rule or order may result from the hearing unless the requirements of ch. 227 are satisfied.

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## 601.42 Reports and replies

(1) Reports. The commissioner may require from any person subject to regulation under chs. 600 to 646:

(a) Statements, reports, answers to questionnaires and other information, and evidence thereof, in whatever reasonable form the commissioner designates, and at such reasonable intervals as the commissioner chooses, or from time to time;

(b) Full explanation of the programming of any data storage or communication system in use; and

(c) That information from any books, records, electronic data processing systems, computers or any other information storage system be made available to the commissioner at any reasonable time and in any reasonable manner.

(2) Forms. The commissioner may prescribe forms for the reports under sub. (1) and specify who shall execute or certify such reports. The forms shall be consistent, so far as practicable, with those prescribed by other jurisdictions.

(3) Accounting methods. The commissioner may prescribe reasonable minimum standards and techniques of accounting and data handling to ensure that timely and reliable information will exist and will be available to him.

(4) Replies. Any officer, manager or general agent of any insurer authorized to do or doing an insurance business in this state, any person controlling or having a contract under which the person has a right to control such an insurer, whether exclusively or otherwise, any person with executive authority over or in charge of any segment of such an insurer's affairs, and any insurance agent or other person licensed under chs. 600 to 646 shall reply promptly in writing or in other designated form, to any written inquiry from the commissioner requesting a reply.

(5) Verification. The commissioner may require that any communication made to the commissioner under this section be verified.

(6) Immunity. In the absence of actual malice, no communication to the commissioner required by law or by the commissioner shall subject the person making it to an action for damages for defamation.

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## 601.43 Examinations and alternatives

(1) Power to examine.

(a) *Insurers and other licensees.* Whenever the commissioner deems it necessary in order to inform himself or herself about any matter related to the enforcement of chs. 600 to 646, the commissioner may examine the affairs and condition of any licensee under chs. 600 to 646 or applicant for a license, of any person or organization of persons doing or in process of organizing to do an insurance business in this state, and of any advisory organization serving any of the foregoing in this state.

(b) *Collateral examinations.* So far as reasonably necessary for an examination under par. (a), the commissioner may examine the accounts, records, documents or evidences or transactions, so far as they relate to the examinee, of any officer, manager, general agent, employee, person who has executive authority over or is in charge of any segment of the examinee's affairs, person controlling or having a contract under which the person has the right to control the examinee whether exclusively or with others, person who is under the control of the examinee, or person who is under the control of a person who controls or has a right to control the examinee whether exclusively or with others.

(c) *Availability of records.* On demand every examinee under par. (a) shall make available to the commissioner for examination any of its own accounts, records, documents or evidences of transactions and any of those of the persons listed in par. (b). Failure to do so shall be deemed to be concealment of records under s. 645.41(8), except that if the examinee is unable to obtain accounts, records, documents or evidences of transactions, failure shall not



be deemed concealment if the examinee terminates immediately the relationship with the other person.

(d) *Delivery of records to the office.* On order of the commissioner any licensee under this code shall bring to the office for examination such records as the order reasonably requires.

(2) *Duty to examine.* (a) *Insurers and rate service organizations.* The commissioner shall examine every domestic insurer and every licensed rate service organization at intervals to be established by rule.

(b) *On request.* Whenever the commissioner is requested by verified petition signed by 25 persons interested as shareholders, policyholders or creditors of an insurer alleging that there are grounds for formal delinquency proceedings, the commissioner shall forthwith examine the insurer as to any matter alleged in the petition. Whenever the commissioner is requested to do so by the board of directors of a domestic insurer, the commissioner shall examine the insurer as soon as reasonably possible.

(c) *Specific requirements.* The commissioner shall examine insurers as otherwise required by law.

(3) *Audits or actuarial evaluations.* In lieu of all or part of an examination under subs. (1) and (2), or in addition to it, the commissioner may order an independent audit by certified public accountants or actuarial evaluation by actuaries approved by the commissioner of any person subject to the examination requirement. Any accountant or actuary selected is subject to rules respecting conflicts of interest promulgated by the commissioner. Any audit or evaluation under this section is subject to s. 601.44, so far as appropriate.

(4) *Alternatives to examination.* In lieu of all or part of an examination under this section, the commissioner may accept the report of an audit already made by certified public accountants or actuarial evaluation by actuaries approved by the commissioner, or the report of an examination made by the insurance department of another state or of the examination by another govern-

ment agency in this state, the federal government or another state.

(5) *Purpose and scope of examination.* An examination may but need not cover comprehensively all aspects of the examinee's affairs and condition. The commissioner shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including but not limited to the length of time the examinee has been doing business, the length of time the examinee has been licensed in this state, the nature of the business being examined, the nature of the accounting records available and the nature of examinations performed elsewhere. The examination of an alien insurer shall be limited to insurance transactions and assets in the United States unless the commissioner orders otherwise after finding that extraordinary circumstances necessitate a broader examination.

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#### 625.11 Rate standards

(1) *General.* Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly.

(2) *Excessiveness.* (a) *Competitive market.* Rates are presumed not to be excessive if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the commissioner shall consider all relevant tests including:

1. The number of insurers actively engaged in the class of business;

2. The existence of rate differentials in that class of business;

3. Whether long-run profitability for insurers generally of the class of business is unreasonably high in relation to its riskiness.

(b) *Noncompetitive market.* If such competition does not exist, rates are excessive if they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

(3) *Inadequacy.* Rates are inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

(4) *Unfair discrimination.* One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

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#### 625.12 Rating methods

In determining whether rates comply with the standards under s. 625.11, the following criteria shall be applied:

(1) *Basic factors in rates.* Due consideration shall be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to trends within and outside of this state, to loadings for levelling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors, including the judgment of technical personnel.

(2) *Classification.* Risks may be classified in any reasonable way for the establishment of rates and minimum premiums, except that no classifications may be based on

race, color, creed or national origin, and classification in automobile insurance may not be based on physical condition or developmental disability as defined in s. 51.01 (5). Rates thus produced may be modified for individual risks in accordance with rating plans or schedules which establish reasonable standards for measuring probable variations in hazards, expenses, or both. Rates may also be modified for individual risks under s. 625.13 (2).

(3) *Expenses.* The expense provisions included in the rates to be used by an insurer may reflect the operating methods of the insurer and, so far as it is credible, its own expense experience.

(4) *Profits.* The rates may contain an allowance permitting a profit that is not unreasonable in relation to the riskiness of the class of business.

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#### 625.13 Filing of rates

(1) Except as provided in sub. (2), every authorized insurer and every rate service organization licensed under s. 625.31 which has been designated by any insurer for the filing of rates under s. 625.15 (2) shall file with the commissioner all rates and supplementary rate information and all changes and amendments thereof made by it for use in this state within 30 days after they become effective.

(2) *Consent to rate.* Upon written application of the insured, stating the insured's reasons therefor, filed with and not disapproved by the commissioner within 10 days after filing, a rate in excess of that provided by a filing otherwise applicable may be applied to any specific risk. The rate may be disapproved without a hearing, subject to s. 601.62 (3). If disapproved, the rate otherwise applicable applies from the effective date of the policy, but the insurer may cancel the policy pro rata on 10 days' notice to the policyholder. If the insurer does not cancel the policy the insurer shall refund any excess premium from the effective date of the policy.

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### 625.15 Delegation of rate making and rate filing obligation

(1) Rate making. An insurer may itself establish rates and supplementary rate information for any market segment based on the factors in s. 625.12, or it may use rates and supplementary rate information prepared by a rate service organization, with average expense factors determined by the rate service organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(2) Rate filing. An insurer may discharge its obligation under s. 625.13 by giving notice to the commissioner that it uses rates and supplementary rate information prepared by a designated rate service organization, with such information about modifications thereof as is necessary fully to inform the commissioner. The insurer's rates and supplementary rate information shall be those filed from time to time by the rate service organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer.

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### 625.22 Disapproval of rates

(1) Order in event of violation. If the commissioner finds after a hearing that a rate is not in compliance with s. 625.11, the commissioner shall order that its use be discontinued for any policy issued or renewed after a date specified in the order.

(2) Timing of order. The order under sub. (1) shall be issued within 30 days after the close of the hearing or within such reasonable time extension as the commissioner may fix.

(3) Approval of substituted rate. Within one year after the effective date of an order under sub. (1), no rate promulgated to replace a disapproved one may be used until it has been filed with the commissioner and not disapproved within 30 days thereafter.

(4) Interim rates. Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall on request specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are *de minimis* shall not be required.

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### 625.23 Special restrictions on individual insurers

The commissioner may by order require that a particular insurer file any or all of its rates and supplementary rate information 15 days prior to their effective date, if and to the extent that he or she finds, after a hearing, that the protection of the interests of its insureds and the public in this state requires closer supervision of its rates because of the insurer's financial condition or rating practices. The commissioner may extend the waiting period for any filing for not to exceed 15 additional days by written notice to the insurer before the first 15-day period expires. A filing not disapproved before the expiration of the waiting period shall be deemed to meet the requirements of this chapter, subject to the possibility of subsequent disapproval under s. 625.22.

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### 625.31 Operation and control of rate service organizations

(1) License required. No rate service organization shall provide any service relating to the rates of any insurance subject to this chapter, and no insurer shall utilize the services of such organization for such purposes unless the organization has obtained a license under s. 625.32.



(2) Availability of services. No rate service organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

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#### 625.32 Licensing

(1) Application. A rate service organization applying for a license as required by s. 625.31 shall include with its application:—

(a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation and any other rules or regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) The name and address of one or more residents of this state upon whom notices, process affecting it or orders of the commissioner may be served;

(d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(e) Any other relevant information and documents that the commissioner may require.

(2) Change of circumstances. Every organization which has applied for a license under sub. (1) shall thereafter promptly notify the commissioner of every material change in the facts or in the documents on which its application was based.

(3) Granting of license. If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of law are met, he or she shall issue a license specifying the authorized activity of the applicant. The commissioner may not issue a license if the proposed activity would tend to create a monopoly or to lessen or destroy price competition.

(4) Duration. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked.

(5) Amendments to constitution and bylaws. Any amendment to a document filed under sub. (1) (a) shall be filed at least 30 days before it becomes effective. Failure to comply with this subsection shall be a ground for revocation of the license granted under sub. (3).

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#### 625.34 Recording and reporting of experience

The commissioner shall promulgate or approve reasonable rules, including rules providing statistical plans, for use thereafter by all insurers in the recording and reporting of loss and expense experience, in order that the experience of such insurers may be made available to the commissioner. No insurer shall be required to record or report its experience on a classification basis inconsistent with its own rating system. The commissioner may designate one or more rate service organizations to assist the commissioner in gathering such experience and making compilations thereof, which shall be made available to the public.

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SUPREME COURT OF THE UNITED STATES

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No. 91-72

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

TICOR TITLE INSURANCE COMPANY, ET AL.

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ORDER ALLOWING CERTIORARI

Filed October 7, 1991

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The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

October 7, 1991